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L A W S  
OF THE  
C O M M O N W E A L T H  
OF  
P E N N S Y L V A N I A,

FROM THE FOURTEENTH DAY OF OCTOBER, ONE THOUSAND  
SEVEN HUNDRED, TO THE TWENTIETH DAY OF MARCH,  
ONE THOUSAND EIGHT HUNDRED AND TEN.

*Republished,*

*UNDER THE AUTHORITY OF THE LEGISLATURE.*

WITH

NOTES AND REFERENCES.

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IN FOUR VOLUMES.

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VOL. I.

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PHILADELPHIA:

PRINTED AND PUBLISHED BY JOHN BIOREN, NO, 88, CHESNUT-STREET.

1810.

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An ACT authorizing the Governor to contract with John Bioren for printing a certain number of copies of the Laws of this Commonwealth.

SECT. I. *BE it enacted by the Senate and House of Representatives of the Commonwealth of Pennsylvania, in General Assembly met, and it is hereby enacted by the authority of the same,* That the Governor be, and he hereby is authorized and required to receive proposals, and contract with John Bioren, for thirteen hundred and fifty copies of his proposed edition of the Acts of Assembly of this commonwealth, to the end of the present session of the Legislature, to be printed correctly on good paper, with entirely new small pica type, in four volumes royal octavo, of six hundred pages, each well bound and lettered, at the price of two dollars and fifty cents per volume, and any number which may be demanded above the said thirteen hundred and fifty, at two dollars and twenty-five cents per volume: *Provided*, That no money shall be paid on said contract until the work is completed, examined and approved by the Judges of the Supreme Court, and the Legislature, and deposited in the office of the Secretary of the Commonwealth: *And provided also*, That the said John Bioren agrees to wave the benefit of his contract already existing as far as respects the printing of the laws of the last and present sessions of the Legislature, in a volume form.

SECT. II. *And be it further enacted by the authority aforesaid*, That said edition shall be printed in the following form, *to wit*, Prefixing to the first volume the titles of all the laws which are obsolete, repealed or expired, under their appropriate years, giving abstracts only of private acts, of acts for the incorporation of turnpike and toll bridge companies, and other acts of local concern, inserting in each volume a general index to heads and titles, and in the last volume a complete digested index to the whole work, and noting under each act, the decisions of the Courts of Pennsylvania, or of the United States, which have been given upon the construction thereof.

SECT. III. *And be it further enacted by the authority aforesaid*, That the Governor be, and he is hereby authorized to appoint some fit person of legal knowledge, to superintend the said publication, arrange the laws, prepare the abstracts, the indexes, and insert the notes of judicial decisions as herein before mentioned, and that he be allowed therefor such sum as the Legislature for the time being may think a reasonable compensation.

JOHN WEBER, SPEAKER

OF THE HOUSE OF REPRESENTATIVES.

P. C. LANE, SPEAKER OF THE SENATE.

APPROVED—the twenty-eighth day of February, one thousand eight hundred and ten.

SIMON SNYDER.



## A PETITION OF RIGHT.

To Benjamin Fletcher, Captain-General and Governor in Chief in and over the Province of Pennsylvania, and Country of New-Castle, &c.

*We, the Freemen of the said Province and Country, in General Assembly met,*

HUMBLY SHEW,

That whereas the late King Charles the second, in the three and thirtieth year of his reign, by letters patent under the great seal of England, did (for the consideration therein mentioned) grant unto William Penn, and his assigns, this colony or tract of land, thereby erecting the same into a province, calling it Pennsylvania, and constituting the said William Penn absolute Proprietary of the said Province (saving amongst other things the sovereignty thereof) thereby also granting unto the said William Penn, his deputies and lieutenants, by virtue of the said royal charter, full, free and absolute power, by and with the assent of the freemen of the said province, to make, enact and publish any laws whatsoever, for any end, appertaining either to the public state, peace or safety of the said country, or unto the private utility of particular persons, according to their best discretion. Which laws, so as aforesaid made and published, the said late King did, by the said letters patent, enjoin, require and command, should be most absolute and available in law, and that all the liege people and subjects of the said late King, his heirs and successors, should observe and keep the same inviolably in these parts. But that the laws for regulating and governing of property within this province, and likewise as to felonies, might be and continue the same as they should be for the time being, by the general course of the law of England, until the said laws should be altered by the said William Penn, and by the freemen of the said province, their delegates or deputies, or the greater part of them.

And to the end the said William Penn, or the inhabitants of this province, might not at any time thereafter, by misconstruction or colour of the powers aforesaid, or by pretence of the said laws thereafter to be made, through inadvertency or design, depart from the faith and allegiance, which, by the laws of England, they and all the King's subjects in his dominions always owe to him, his heirs and successors, he, the said late King, did, by his letters patent, declare it to be his further will and pleasure, that a duplicate of all the laws, so as aforesaid made and published, should, within five years after the making thereof, be transmitted and delivered to the King's Privy Council for the time being. And if any of the said laws, within the space of six months after that they were so transmitted, should be declared by the said King, his heirs or successors, or his or their Privy Council, inconsistent with the sovereignty or lawful prerogative of the said King, his heirs or successors, or contrary to the faith and allegiance due to the legal government of England from the said William Penn, or the planters and inhabitants of the said province, and that thereupon any of the said laws were adjudged and declared to be void by the said King, his heirs or successors, under his or their Privy Seal, that then, and from thenceforth, such laws, concerning which the said judgment and declaration were made, should become void, otherwise the laws so transmitted should remain and stand in full force, according to the true intent and meaning thereof.

By virtue of which letters patent, and pursuant to the powers, provisos and restrictions therein specified, divers reasonable and wholesome laws were made, transmitted, and presented to the said King and Privy Council.

And whereas the King and Queen that now are over England, &c. by their letters patent, under their great seal, dated the one and twentieth day of October, in the fourth year of their reign, having (for the reasons therein mentioned) taken the government of this province and country into their own hands, and under their immediate care and protection, did think fit to constitute and appoint thee, the said Benjamin Fletcher, to be their Captain-General and Governor in Chief in and over the same, thereby requiring thee, amongst other things, to do and execute all things in due manner that shall belong to thy command, and the trust reposed in thee by the said King and Queen, according



to such reasonable laws and statutes as then were in force, or thereafter should be made and agreed upon by thee, with the advice and consent of the Council and Assembly of this country.

Now forasmuch as the laws of this government, so made and transmitted as aforesaid, have not been hitherto adjudged or declared (either by the late King and Council, or by his successors, the said King and Queen and their Council, under his or their Privy seal) to be void, so that such of the said laws as were not discontinued or repealed by the legislative authority of this government are still in force.

And seeing it hath pleased the said King and Queen so tenderly to regard the happy government and comfort, as well as protection, of this province and country, as to conserve those our laws and constitutions so fitly accommodated to our circumstances (with respect to tender consciences, as well as commerce and cultivation) we can do no less, than with gratitude and sincerity acknowledge their royal bounty and peculiar favour therein, earnestly desiring, that thou would be pleased (according to the tenor and most favourable direction of thy commission) to govern us, and cause the administration of justice within this government to be agreeable with these following laws, which are now in force as aforesaid, that is to say;

The 1st law, concerning liberty of conscience; the 2d law, concerning the qualifications of members of assembly; the 3d and 4th laws, against swearing; the 5th and 83d laws, against profane speaking; the 6th law, against cursing; the 7th law, against adultery; the 8th law, against incest; the 11th law, against polygamy; the 12th and 83d laws, against drunkenness; the 13th and 169th laws, against such as suffer drunkenness in their houses, and about ordinaries; the 14th law, against drinking healths; the 17th law, against breaking into houses; the 19th law, against forcible entry; the 20th law, against rioters; the 21st law, against menacing parents; the 22d law, against menacing magistrates; the 23d law, against menacing masters or mistresses; the 25th law, against challenging to fight; the 26th and 27th laws, against rude sports, plays and games; the 28th law, against sedition; the 30th law, against spreaders of false news; the 31st and 121st laws, against scolding; the 35th law, concerning days of the week, month, &c. the 37th law, about pleading in English; the 38th law, about trial by twelve men; the 39th, 122d and 150th laws, about fees, bribery and extortion; the 41st law, about defalcation; the 42d, 74th and 167th laws, about arrests; the 43d law, about verbal contracts; the 45th and 46th laws, about wills; the 50th law, against defacers of charters, &c. the 53d law, about gaolers; the 54th law, about prisons; the 55th law, about false imprisonment; the 56th law, about the manner of punishments; the 58th law, about free elections; the 59th law, about taxes; the 64th law, about liberty and property; the 66th law, about summons and court proceedings; the 72d law, about derogators of judgments of courts; the 74th law, about making debtors pay by servitude; the 75th law, against barrators; the 77th law, about Orphans courts; the 79th law, about acknowledging deeds in court; the 80th law, about seven years possession; the 81st law, about county seals; the 82d law, about counterfeiting hands and seals; the 84th law, about viewing pipe staves; the 90th law, against taking away boats or canoes; the 91st and 184th laws, about fences; the 93d law, about firing woods; the 96th law, about hog stealing; the 100th law, about cartways; the 101st law, about houses of correction; the 102d law, about weights and measures; the 108th law, about departers out of the province; the 114th law, about buying land of natives; the 118th law, against murder; the 119th law, about binding to the peace; the 120th law, against fornication; the 125th law, about assigning bills and specialties; the 126th law, about bills of exchange; the 132d law, against trusting mariners; the 134th law, about passes; the 135th law, against selling servants out of the province; the 136th law, against attaching servants; the 137th law, about entertaining servants; the 138th law, about trucking with servants; the 153d and 180th laws, about run-away servants; the 146th law, about summoning juries; the 149th law, about exporting horses; the 156th law, about monthly courts; the 164th and 165th laws, about robbing and stealing; the 168th law, about appraisers; the 177th law, about juries not appearing; the 178th law about removing land marks; the 181st law, about debts payable in country produce; the 183d law, about tanning leather; the 187th law, against usury; the 188th law, about sale of intestates land by the widow or administrator; the 189th law, about taking lands in execution for debts, &c. the 194th law, against witnesses refusing to give evidence, being summoned; the 198th law, about the Dyke of New-Castle; the 199th law, against rangers; the 200th law, about determining debts under forty shillings; the 201st law, about the registry kept by religious societies; the 203d law, concerning the surveyor general's

All which said laws and chapters, and every part thereof, we humbly desire that thou wilt be pleased to cause thy officers and ministers to observe and put in due execution, as they tender the honour of God, the king's commands, the prosperity of this government, and the rights and liberties of the free people thereof, which said laws and chapters hereafter follow in these words, that is to say,

By his excellency Benjamin Fletcher, Captain-General and Governor in Chief of the province of New-York, province of Pennsylvania, and country of New-Castle, and the territories and tracts of land depending thereon in America.

These are in their Majesties name to require and command all Justices, Sheriffs, Constables, and other officers within the province of Pennsylvania, and country of New-Castle, That they do execute, or cause to be put in execution the abovesaid laws, until their Majesties pleasure shall be further known. Given under my hand this first day of June, Anno Domini, 1693.

BENJAMIN FLETCHER.

*See Votes of Assembly, vol. I, page 78—79—99.*

*Note.* Most of the laws mentioned in the foregoing list were subsequently supplied—The remainder are entirely obsolete.



# L A W S

OF

## P E N N S Y L V A N I A,

*REPEALED, OBSOLETE, AND EXPIRED.*

- A. D.  
1700. CHAPTER 1. The law concerning liberty of conscience ; passed in 1700 ; recorded A. vol. I. page 1 ; repealed 7th February, 1705 ; see chap. 115 & 660.
2. An act against riots, rioters, riotous sports, plays and games : passed in 1700 ; recorded A. vol. I. page 2 ; repealed 7th February, 1705 ; supplied by chap. 128.
  3. An act against adultery and fornication, &c. passed in 1700 ; recorded A. vol. I. page 2 ; repealed 7th February, 1705 ; supplied by chap. 122.
  4. An act against rape or ravishment : passed in 1700 ; recorded A. vol. I. page 4 ; repealed 7th February, 1705.
  5. An act against incest, sodomy, and bestiality : passed in 1700 ; recorded A. vol. I. page 5 ; repealed 7th February, 1705.
  6. An act against bigamy : passed in 1700 ; recorded A. vol. I. page 5 ; repealed 7th February, 1705 ; supplied by chap. 123.
  7. An act against robbing and stealing : passed in 1700 ; recorded A. vol. I. page 6 ; repealed 7th February, 1705.
  8. An act about boats and canoes : passed in 1700 ; recorded A. vol. I. page 7 ; repealed March 20th, 1810.
  9. An act against breaking into houses : passed in 1700 ; recorded A. vol. I. page 7 ; repealed 7th February, 1705.
  10. An act against firing of houses, &c. passed in 1700 ; recorded A. vol. I. page 8 ; repealed 7th February, 1705.
  12. An act against menacing, and assault and battery : passed in 1700 ; recorded A. vol. I. page 9 ; repealed 7th February, 1705.
  13. An act against murder : passed in 1700 ; recorded A. vol. I. page 9 ; repealed 7th February, 1705.
  14. An act against sedition, spreading false news, and defamation : passed in 1700 ; recorded A. vol. I. page 10 ; repealed 7th February, 1705.
  17. An act for county seals, and against counterfeiting hands and seals : passed in 1700 ; recorded A. vol. I. page 11 ; repealed 7th February, 1705 ; supplied by chap. 149.
  18. An act for regulating the interest of money : passed in 1700 ; recorded A. vol. I. page 11 ; repealed 7th February, 1705 ; supplied by chap. 262.
  19. An act of privileges to a free man : passed in 1700 ; recorded A. vol. I. page 12 ; repealed 7th February, 1705.
  20. An act against buying land of the natives : passed in 1700 ; recorded A. vol. I. page 12 ; obsolete.
  21. An act directing how petty offences shall be punished : passed in 1700 ; recorded A. vol. I. page 12 ; repealed.
  22. An act for the names of days and months : passed in 1700 ; recorded A. vol. I. page 13 ; repealed 7th February, 1705.
  23. An act for the better provision of the poor, &c. passed in 1700 ; recorded A. vol. I. page 13 ; repealed 7th February, 1705 ; supplied by chap. 635.
  24. An act about recording of deeds : passed in 1700 ; recorded A. vol. I. page 13 ; repealed 7th February, 1705 ; supplied by chap. 208.
  25. An act for preventing clandestine marriages : passed in 1700 ; recorded A. vol. I. page 14 ; supplied in 1701, (chap. 109.)
  27. An act limiting the presentments of the grand jury : passed in 1700 ; recorded A. vol. I. page 14 ; repealed 7th February, 1705.

A. D.

1700. CHAPTER 28. An act to ascertain the number of members of assembly, and to regulate elections : passed in 1700 ; recorded A. vol. I. page 15 ; repealed 7th February, 1705.
29. The law about attachment : passed in 1700 ; recorded A. vol. I. page 17 ; repealed 22d August, 1752. (This act was repealed in council, February 7th 1705.—The act of August 22d, 1752, sect. 7, repeals an act passed in the 12th year of Wm. 3, entitled “ an act about attachments under forty shillings.” The editor can find no act of that title in that year : but chap. 29 corresponds with the date.—If the same act was intended to be repealed, the repeal was unnecessary.)—
30. An act for naturalization : passed in 1700 ; recorded A. vol. I. page 19 ; repealed 7th February, 1705 ; see chap. 359 ; (obsolete.)
31. An act for ascertaining the descent of lands, and better disposition of the estates of persons intestate : passed in 1700 ; recorded A. vol. I. page 20 ; repealed 7th February, 1705 ; (supplied.)
32. An act for raising county levies : passed in 1700 ; recorded A. vol. I. page 24-25 ; repealed 20th March, 1703 ; (supplied.)
33. An act directing the attests of several officers and ministers : passed in 1700 ; recorded A. vol. I. page 27 ; repealed 7th February, 1705.
34. An act for the better attendance of the Justices on the several Courts of Judicature within this province and territories : passed in 1700 ; recorded A. vol. I. page 29 ; obsolete.
35. An act against Jurors absenting, being lawfully summoned to attend the several courts of judicature within this province and territories : passed in 1700 ; recorded A. vol. I. page 30 ; supplied 20th May, 1767.
36. An act for determining of debts under forty shillings : passed in 1700 ; recorded A. vol. I. page 30 ; repealed 7th February, 1705.
37. An act to prevent immoderate fines : passed in 1700 ; recorded A. vol. I. page 30 ; repealed 7th February, 1705.
38. An act about defalcation : passed in 1700 ; recorded A. vol. I. page 30 ; repealed 7th February, 1705 ; supplied by chap. 150.
39. An act against speaking in derogation of courts : passed in 1700 ; recorded A. vol. I. page 31 ; repealed 7th February, 1705.
40. An act for the appraisement of goods : passed in 1700 ; recorded A. vol. I. page 31 ; repealed March 20th, 1810.
42. An act to oblige witnesses to give evidence, and to prevent false swearing : passed in 1700 ; recorded A. vol. I. page 32 ; repealed 7th February, 1705.
43. An act confirming devises of lands, and validity of nuncupative wills : passed in 1700 ; recorded A. vol. I. page 83 ; repealed 7th February, 1705 ; supplied by chap. 133.
45. An act to prevent all duelling, and fighting of duels, within this province and territories : passed in 1700 ; recorded A. vol. I. page 35 ; obsolete, and supplied by chap. 2717.
46. An act for empowering widows and administrators to sell so much of the lands of intestates, as may be sufficient to clear their debts, &c. passed in 1700 ; recorded A. vol. I. page 36 ; repealed 7th February, 1705 ; chap. 1740—1938.
47. And act for the preservation of the person of the proprietary and governor : passed in 1700 ; recorded A. vol. I. page 36 ; repealed 7th February, 1705.
50. An act for erecting and establishing a post-office : passed in 1700 ; recorded A. vol. I. page 40 ; obsolete.
51. An act for the assize of bread : passed in 1700 ; recorded A. vol. I. page 45 ; repealed 21st March, 1777.
52. An act for priority of payment to the inhabitants of this government : passed in 1700 ; recorded A. vol. I. page 46 ; repealed 7th February, 1705.



A. D.

1700. CHAPTER 53. An act for the regulating of streets and water-courses in the cities and towns of this government: passed in 1700; recorded A. vol. I. page 48; supplied 7th June, 1712.
54. An act for preventing accidents that may happen by fire in the towns of Bristol (lately called Buckingham) Philadelphia, Germantown, Darby, Chester, New-Castle, and Lewes, within this government: passed in 1700; supplied by chap. 110.
55. An act to empower the justices in each county to lay out and confirm all roads, except the king's highways and public roads: passed in 1700; recorded A. vol. I. page 49; repealed 6th April, 1802.
57. An act for the erecting of bridges and maintaining highways: passed in 1700; recorded A. vol. I. page 53; repealed 6th April, 1802.
58. An act against wears cross creeks and rivers: passed in 1700; recorded A. vol. I. page 55; repealed March 20th, 1810.
59. An act against unseasonable firing of woods: passed in 1700; recorded A. vol. I. page 55; repealed 29th March, 1735.
60. An act about erecting and regulating the prices of ferries: passed in 1700; recorded A. vol. I. page 55; supplied 20th March, 1723.
61. An act for the trial of negroes: passed in 1700; recorded A. vol. I. page 55; repealed 7th February, 1705.
62. An act to prevent sickly vessels coming into this government: passed in 1700; recorded A. vol. I. page 59; repealed 22d January, 1774.
63. An act for the sitting of the orphans' courts: passed in 1700; recorded A. vol. I. page 267; supplied 27th March, 1713.
64. An act requiring all masters and commanders of all ships and vessels to make report at the town of New-Castle, that are or shall be bound to and from the sea: passed in 1700; recorded A. vol. I. page 59; obsolete.
65. An act for the levying of fines: passed in 1700; recorded A. vol. I. page 61; repealed 7th February, 1705.
66. The law about departers out of this province: passed in 1700; recorded A. vol. I. page 61; repealed 7th February, 1705.
67. An act against the mixing and adulterating strong liquors: passed in 1700; recorded A. vol. I. page 62; repealed 7th February, 1705.
68. The Law against scolding: passed in 1700; recorded A. vol. I. page 62; repealed 7th February, 1705.
69. The law about killing of wolves: passed in 1700; recorded A. vol. I. page 63; supplied March 20th, 1806; chap. 2651.
71. An act for regulating money-weights, and for stamping the same: passed in 1700; recorded A. vol. I. page 63; obsolete.
72. An act appointing the rate of the money or coin within this province and territories, and for preventing the clipping of the same: passed in 1700; recorded A. vol. I. page 64; repealed 30th July, 1703.
74. An act to prevent the sale of ill-tanned leather, and working the same into shoes and boots: passed in 1700; recorded A. vol. I. page 66; repealed 7th February, 1705.
76. An act for viewing pipe-staves: passed in 1700; supplied 21st April, 1759, post. chap. 450.
77. An act for preventing of swine running at large: passed in 1700; recorded in the votes of the legislature, 1st vol. page 158; repealed 17th October, 1701.
78. An act that no public house or inn within this government be kept without licence: passed in 1700; recorded A. vol. I. page 67; repealed 7th February, 1705.
79. An act for the better assessing and raising of county levies for this present year 1700: passed in 1700; expired.

A. D.

1700. CHAPTER 80. An act for ascertaining the dimensions of cask, and for the true packing of meat for transportation: passed in 1700; recorded A. vol. I. page 68; repealed March 20th, 1810; (see Index.)
82. The law against drunkenness and healths drinking: passed in 1700; recorded A. vol. I. page 71; repealed 7th February, 1705.
83. An act for bailing of prisoners, and about imprisonment: passed in 1700; recorded A. vol. I. page 71; repealed 7th February, 1705; see chap. 1121.
84. An act against pirates and sea robbers: passed in 1700; recorded A. vol. I. page 72; repealed 7th February, 1705.
85. An act for granting an impost upon wines, rum, beer, ale, cyder, &c. imported, retailed and sold, in this province and territories: passed in 1700; recorded A. vol. I. page 77; expired.
86. An act for the raising of one penny per pound, and six shillings per head, for support of the government, and payment of debts, and defraying the necessary charges thereof: passed in 1700; recorded A. vol. I. page 81; expired.
87. An act for granting and raising to the proprietary and governor the sum of two thousand pounds, upon the clear value of all real and personal estates, and upon the polls of all freemen, within this province and counties annexed: passed in 1700; recorded A. vol. I. page 85; expired.
88. An act for the effectual establishment and confirmation of the freeholders of this province and territories, their heirs and assigns, in their lands and tenements: passed in 1700; recorded A. vol. page 89; repealed 7th February, 1705.
89. An act for erecting a bridge over the creek at Chester, in the county of Chester: passed in 1700; recorded A. vol. I. page 94; repealed 7th February, 1705.
90. An act about country product, to be current pay in the territories of the province of Pennsylvania: passed in 1700: recorded A. vol. I. page 96; extra jurisdiction.
91. The law for continuing and confirming the laws hereafter expressed: passed in 1700; (viz. the 13 laws next following, and see chap. 105.)
92. The law about court proceedings and summons: re-enacted in 1700; recorded A. vol. I. page 96; supplied post. chap. 298.
93. The law about trials by twelve men: re-enacted in 1700; recorded A. vol. I. page 97; repealed 7th February, 1705.
94. The law about arrests, and making debtors pay by servitude: re-enacted in 1700; recorded A. vol. I. page 97; repealed 7th February, 1705.
95. The law about false imprisonment: re-enacted in 1700; recorded A. vol. I. page 99; repealed 7th February, 1705.
96. The law about acknowledging deeds in court: re-enacted in 1700; recorded A. vol. I. page 99; repealed 7th February, 1705.
97. The law about seven years possession: re-enacted in 1700; recorded A. vol. I. page 100; repealed 7th February, 1705.
98. The law about summoning of juries: re-enacted in 1700; recorded A. vol. I. page 100; obsolete.
99. The law about the manner of giving evidence, and against such as lie in conversation: re-enacted in 1700; recorded A. vol. I. page 100; repealed 7th February, 1705.
100. The law about appeals to the province courts: passed in 1700; see post. chap. 102.
101. The law about forms of writs: passed in 1700; recorded A. vol. I. page 101; repealed and supplied.
102. The law against persons judging in their own cause: passed in 1700; recorded A. vol. I. page 102; repealed March 20th, 1810.



A. B.

1700. CHAPTER 103. The law about officers' fees: passed in 1700; recorded A. vol. I. page 103.
104. The law about Indian traders: passed in 1700; recorded A. vol. I. page 102; obsolete.
1701. 105. The law for confirmation of the laws of this government: passed in 1701; recorded A. vol. I. page 106; repealed 7th February, 1705.
106. An act for establishing courts of judicature in this province, and counties annexed: passed in 1701; recorded A. vol. I. page 110; repealed 7th February, 1705.
107. An act directing the punishment of larceny under five shillings; passed in 1701; recorded A. vol. I. page 121; supplied—
108. An act about attachments under forty shillings: passed in 1701; recorded A. vol. I. page 122; repealed post. chap. 399.
110. An act for preventing accidents that may happen by fire in the towns of Bristol (formerly called Buckingham) Philadelphia, Germantown, Darby, Chester, New-Castle and Lewis, within this government: passed in 1700; recorded A. vol. I. page 124; part supplied (post. chap. 245, and the rest obsolete.)
111. An act against swine running at large in several of the townships within this government: passed in 1701; recorded A. vol. I. page 126; repealed 7th February, 1705.
112. An act for the destruction of blackbirds and crows: passed in 1700; recorded A. vol. I. page 127; repealed March 20th, 1810.
113. An act for the sale of the court-house and prison in the county of Chester: passed in 1701; recorded A. vol. 1. page 128; obsolete.
114. An act against selling rum and other strong liquors to the Indians: passed in 1701; recorded A. vol. I. page 129; obsolete.
1705. 116. An act against murder and man slaughter: passed in 1700; recorded A. vol. I. page 139; supplied.
117. An act against burglary: passed in 1700; recorded A. vol. I. page 140; supplied.
118. An act against robbing and stealing: passed in 1705; recorded A. vol. I. page 141; supplied.
120. An act against rape or ravishment: passed in 1705; recorded A. vol. I. page 145; supplied.
124. An act against sodomy and buggery: passed in 1705; recorded A. vol. I. page 150; supplied.
125. An act against burning of houses: passed in 1705; recorded A. vol. I. page 150; supplied.
126. An act against drunkenness and drinking of healths: passed in 1705; recorded A. vol. I. page 151; (supplied.)
127. An act against riotous sports, plays and games: passed in 1705; recorded A. vol. I. page 151; repealed 24th October, 1709.
129. An act for limiting the presentments of the Grand Jury: passed in 1705; recorded A. vol. I. page 153; repealed 24th October, 1709.
130. An act for determining of debts under forty shillings: passed in 1705; recorded A. vol. I. page 154; repealed.
131. An act for further securing the administration of the government of this province: passed in 1705; recorded A. vol. I. page 154; repealed 24th October, 1709.
134. An act directing the order of payment of debts of persons deceased: passed in 1705; recorded A. vol. I. page 162; supplied.
135. An act for the better settling of intestates estates: passed in 1705; recorded A. vol. I. page 163; repealed.

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1705. CHAPTER 136. An act for the acknowledging and recording of deeds: passed in 1705; recorded A. vol. I. page 170; repealed 24th October, 1709.
137. An act to ascertain the number of members of assembly, and to regulate the elections: passed in 1705; recorded A. vol. I. page 176; repealed; (see the Constitution.)
140. An act about departers out of this province; passed in 1705; recorded A. vol. I. page 189; obsolete.
141. An act for the better improving a good correspondence with the Indians: passed in 1705; recorded A. vol. I. page 190; expired.
143. An act for the trial of negroes: passed in 1705; recorded A. vol. I. page 193; repealed 1st March, 1780.
144. An act to prevent the importation of Indian slaves: passed in 1705; recorded A. vol. I. page 195; obsolete.
146. An act for the killing of wolves: passed in 1705; recorded A. vol. I. page 196; repealed 13th April, 1782; (supplied.)
148. An act for mariners not to be trusted: passed in 1705; recorded A. vol. I. page 197; repealed March, 20th 1810.
153. An act about arrests, and making debtors pay by servitude: passed in 1705; recorded A. vol. I. page 203; repealed March 20th, 1810.
154. An act for the relief of the poor: passed in 1705; recorded A. vol. I. page 204; repealed 9th March, 1771; (supplied.)
156. An additional act for the better preserving the highways: passed in 1705; recorded A. vol. I. page 208; repealed 21st March, 1772.
157. A supplementary act to that about raising county levies: passed in 1705; recorded A. vol. I. page 208; repealed 20th March, 1724.
159. An act for collecting the arrears of two thousand pounds, granted to the proprietary: passed in 1705; recorded A. vol. I. page 211; expired.
160. An act directing the qualifications of all magistrates and officers, as also the manner of giving evidence: passed in 1705; recorded A. vol. I. page 213; repealed 24th October, 1709.
161. An act for regulating elections of sheriffs and coroners: passed in 1705; recorded A. vol. I. page 217; repealed 13th September, 1785.
162. An act for better proportioning the rates of money in payments made upon contracts according to the former regulation: passed in 1705; recorded A. vol. I. page 219; repealed 24th October, 1709.
163. An act for selling the old court-house, and building a new court-house and prison in the county of Bucks: passed in 1705; recorded A. vol. I. page 221; obsolete.
164. An act for raising a supply of two pence halfpenny per pound and ten shillings per head: Also for granting an impost and laying an excise on sundry liquors, and Negroes imported into this province, for the support of government, and defraying the necessary public charges in the administration thereof: passed in 1705; recorded A. vol. I. page 222; expired.
1709. 165. An act to assure, grant and convey unto Ralph Fishbourne, of Chester, in the county of Chester, gent. one messuage, cottage, house or tenement, and lot of land thereunto belonging, situate in Chester, in the county of Chester aforesaid, commonly known by the name of the old court-house, to hold to the said Ralph Fishbourne, his heirs and assigns, for ever: passed in 1709; recorded A. vol. I. page 231; private act; obsolete.



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1709. CHAPTER 166. An act for ascertaining the rates of money for payment of debts, and preventing exactions on contracts and bargains made before the first day of May, in this present year one thousand seven hundred and nine: passed 30th April, 1709; recorded A. vol. I. page 229; repealed 20th February, 1713.
167. An act for the better enabling of divers inhabitants of the province of Pennsylvania to hold and enjoy lands, tenements and plantations, in the same province: passed 28th September, 1709; recorded A. vol. I. page 267; private act; obsolete.
1710. 168. An act for establishing courts of judicature in this province: passed in 1710; recorded A. vol. I. page 235; repealed 20th February, 1713.
169. An act for regulating and establishing fees: passed in 1710; recorded A. vol. I. page 258; repealed 20th February, 1713.
170. An act for the acknowledging and recording of deeds: passed in 1710; recorded A. vol. II. page 5; repealed 20th February, 1713.
171. An act directing an affirmation to such, who, for conscience sake, cannot take an oath: passed in 1710; recorded A. vol. II. page 10; repealed 20th February, 1713.
173. An act of privileges to a freeman: passed in 1710; recorded A. vol. II. page 12; repealed 20th February, 1713.
174. An act against riotous sports, plays and games: passed in 1710; recorded A. vol. II. page 12; repealed 20th February, 1713.
175. An act to prevent disputes which may hereafter arise about the dates of conveyances, and other instruments and writings; passed in 1710; recorded A. vol. II. page 14; repealed 11th March, 1752.
176. An act for priority of payment of debts to the inhabitants of this province: passed in 1710; recorded A. vol. II. page 15; repealed 20th February, 1713.
177. An act for the better improving a good correspondence with the Indians: passed in 1710; recorded A. vol. II. page 16; expired.
178. An act for regulating of party-walls and buildings in Philadelphia: passed in 1710; recorded A. vol. II. page 17; repealed 20th February, 1713; supplied.
179. An act empowering commissioners to compel the collecting of all arrearages of former taxes: passed in 1710; recorded A. vol. II. page 18; expired.
180. An act for raising a supply of two pence per pound, and eight shillings per head: passed in 1710; recorded A. vol. II. page 20; expired.
1711. 181. An impost act, laying a duty on negroes, wine, rum and other spirits, cyder, and vessels: passed in 1710; recorded A. vol. II. page 25; repealed 20th February, 1713.
182. An act for raising two thousand pounds for the queen's use, by a tax of five pence half-penny per pound, and twenty shillings per head: passed 10th August, 1711; recorded A. vol. II. page 55; obsolete.
1712. 183. An act confirming patents and grants: passed in 1712; recorded A. vol. II. page 30; repealed 20th February, 1713.
184. An act for the better ascertaining the public debts, and collecting the arrears of county levies: passed in 1712; recorded A. vol. II. page 37; repealed 20th March, 1724.
185. An act for raising money on the inhabitants of the city of Philadelphia, for the public use and benefit thereof: passed 7th June, 1712; recorded A. vol. II. page 39; repealed and supplied.
186. An act for the better government of the city of Philadelphia: passed 7th July, 1712; recorded A. vol. II. page 42; repealed.

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1712. CHAPTER 187. An act concerning the register-general's office: passed in 1712; recorded A. vol. II. page 43; repealed and supplied; (see the General Index.)
188. An act for empowering religious societies to buy, hold and enjoy lands, tenements and hereditaments: passed 7th June, 1712; recorded A. vol. II. page 45; repealed.
189. A supplementary act to a law about the manner of giving evidence: passed 7th June, 1712; recorded A. vol. II. page 46; repealed.
190. An act for establishing the lower-ferry on the river Schuylkill: passed 7th June, 1712; recorded A. vol. II. page 47; expired.
191. An act for establishing and regulating of ferries over Delaware river, and Neshaminy creek: passed 7th June, 1712; recorded A. vol. II. page 48; expired.
192. An act to prevent the importation of Negroes and Indians into this province: passed 7th June, 1712; recorded A. vol. II. page 50; repealed.
193. An act for the further securing the administration of the government: passed 7th June, 1712; recorded A. vol. II. page 52; obsolete.
194. A supplementary act to an act, entitled, an impost act, laying a duty on negroes, rum, wine, spirits, cyder, and vessels, and appropriating certain sums of money arising by the same, and other public stock of this province: passed 7th June, 1712; recorded A. vol. II. page 53; expired.
1713. 195. An act for reviving, explaining and continuing several laws in this act mentioned: passed 27th March, 1713; recorded A. vol. II. page 64; expired.
198. An act for amending divers laws therein mentioned: passed 27th March, 1713; recorded A. vol. II. page 78; repealed 21st July, 1719.
199. An act for the laying a duty or excise upon sundry liquors, and also upon hops, to answer several exigencies of this government: passed 27th March, 1713; recorded A. vol. II. page 82; expired.
1715. 200. An act of privileges to a free man: passed 28th May, 1715; recorded A. vol. II. page 89; repealed 21st July, 1719.
201. An act directing appeals to Great-Britain: passed 28th May, 1715; recorded A. vol. II. page 89; extinct.
202. An act for establishing the courts of general quarter sessions in this province: passed 28th May, 1715; recorded A. vol. II. page 90; repealed 21st July, 1719.
203. An act for empowering religious societies to buy, hold and enjoy lands, tenements and hereditaments: passed 28th May, 1715; recorded A. vol. II. page 92; repealed 21st July, 1719.
204. An affirmation act for such, who, for conscience sake, cannot take an oath: passed 28th May, 1715; recorded A. vol. II. page 93; supplied.
205. An act for corroborating the circular line between the counties of Chester and Newcastle: passed 28th May, 1715; recorded A. vol. II. page 94; repealed 21st July, 1719.
206. An act for the better recovery of fines and forfeitures due to the governor and government of this province: passed 28th May, 1715; recorded A. vol. II. page 97; repealed 18th March, 1780.
209. An act for the ease of such, as conscientiously scruple to take the solemn affirmation formerly allowed in Great-Britain: passed 28th May, 1715; recorded A. vol. II. page 105; repealed 21st July, 1719.
210. An act for continuing a friendly correspondence with the Indians: passed 28th May, 1715; recorded A. vol. II. page 106; expired.



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1715. CHAPTER 211. An act for better determining of debts and demands under forty shillings, and for laying aside the two weeks court in the city of Philadelphia: passed 28th May, 1715; recorded A. vol. II. page 108; (see the act of March 20th 1810.)
212. An act for erecting a supreme or provincial court of law and equity in this province: passed 28th May, 1715; recorded A. vol. II. page 109; repealed 21st July, 1719.
213. An act for establishing the several courts of common pleas in this province: passed 28th May, 1715; recorded A. vol. II. page 112; repealed 21st July, 1719.
214. An act for the better ascertaining the practice of the courts of judicature in this province: passed 28th May, 1715; recorded A. vol. II. page 114; repealed 21st July, 1719.
215. An act for raising a supply of one penny in the pound, and four shillings a head, and for reviving other acts therein mentioned: passed 28th May, 1715; recorded A. vol. II. page 120; expired.
216. An act for regulating and establishing fees: passed 28th May, 1715; recorded A. vol. II. page 128; supplied 22d August, 1752.
217. An act for laying a duty on wine, rum, brandy and spirits, cyder and hops, imported into this province: passed 28th May, 1715; recorded A. vol. II. page 138; repealed 21st July, 1719.
218. An act for laying a duty on negroes imported into this province: passed 28th May, 1715; recorded A. vol. II. page 142; repealed 21st July, 1719.
219. An act to enlarge the time for putting in execution a law, passed in the last sessions of the assembly held for this province, entitled an act for raising a supply of one penny in the pound, and four shillings a head; and for reviving other acts therein mentioned: passed 29th October, 1715; recorded A. vol. II. page 146; obsolete.
220. An act for reviving of actions and process, lately depending in the courts of the county of Chester, and for supplying other defects, relating to proceedings at law, in all the courts of common pleas in this province: passed 29th October, 1715; recorded A. vol. II. page 148; obsolete.
1717. 221. An act for raising a supply of one penny per pound, and four shillings a head: passed 24th August, 1717; recorded A. vol. II. page 150; expired.
222. An act for the better regulating of elections of sheriffs, coroners, and assessors: passed 24th August, 1717; recorded A. vol. II. page 157; repealed and supplied.
1718. 223. An act for laying a duty upon sundry liquors retailed in this province: passed 22d February, 1718; recorded A. vol. II. page 158; expired.
224. An act for the better encouraging the trade of this province: passed 22d February, 1718; recorded A. vol. II. page 160; obsolete.
225. An act for laying a duty on wine, rum, brandy and spirits, cyder, hops and flax, imported into this province: passed 22d February, 1718; recorded A. vol. II. page 163; expired.
227. An act for continuing a duty on negroes brought into this province: passed 22d February, 1718; recorded A. vol. II. page 168; expired.
228. An act for raising a duty upon tonnage of ships and vessels: passed 22d February, 1718; recorded A. vol. II. page 171; expired.
230. An act for erecting a ferry to the landing at or near the land of Daniel Cooper, deceased, and also to Gloucester, in the western division of New-Jersey: passed 22d February, 1718; recorded A. vol. II. page 175; expired.

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1718. CHAPTER

231. An act for the more effectual raising of county rates and levies: passed 22d February, 1718; recorded A. vol. II. page 176; repealed 20th March, 1725.
232. An act to supply some omissions in a law passed at the last sessions of assembly, held for this province, entitled an act for raising a duty upon tonnage of ships and vessels: passed 31st May, 1718; recorded A. vol. II. page 186; expired.
233. An act for establishing a ferry over Delaware, at the falls: passed 31st May, 1718; recorded A. vol. II. page 187; expired.
234. An act for the continuing the ferry from Bristol, in the county of Bucks, to Burlington, in the western division of the province of New-Jersey: passed 31st May, 1718; recorded A. vol. II. page 188; expired.
237. An act for supplying some defects in the law for the relief of the poor: passed 31st May, 1718; recorded A. vol. II. page 199; repealed 9th March, 1771.
238. An act for the vesting the house and lot of ground, lying in Philadelphia, late the estate and inheritance of William Clark, of Lewes, in the county of Sussex, deceased, in trustees, to be sold for the payment of his debts, &c. passed 31st May, 1718; recorded A. vol. II. page 202; repealed 8th January, 1719.
239. An act laying an excise or duty on all wine, rum, brandy, and other spirits, retailed in this province: passed 25th April, 1719; recorded A. vol. II. page 205; expired.
240. An act for continuing several acts therein mentioned, laying a duty on wine, rum, brandy, spirits, cyder, hops, flax, negroes, and vessels, until the fourteenth day of May, in the year one thousand seven hundred and twenty-two: passed 24th February, 1721; recorded A. vol. II. page 211; expired.
241. An act for erecting and maintaining of pounds: passed 24th February, 1721; recorded A. vol. II. page 212; repealed; supplied.
243. An act for the trial and punishment of larceny under five shillings: passed 24th February, 1721; recorded A. vol. II. page 216; repealed 5th April, 1790.
246. An act to prevent the killing of deer out of season, and against carrying of guns or hunting, by persons not qualified: passed 26th August, 1721; recorded A. vol. II. page 220; repealed 9th April, 1760.
247. An act for the well tanning and currying of leather, and regulating of cordwainers, and other artificers, using and occupying leather within this province: passed 26th August, 1721; recorded A. vol. II. page 222; repealed March 20th, 1810.
248. An act for imposing a duty on persons convicted of heinous crimes, and imported into this province as servants, or otherwise: passed 5th May, 1722; recorded A. vol. II. page 226; repealed 14th February, 1730.
249. An act for laying a duty on wine, rum, brandy and spirits, molasses, cyder, hops and flax, imported, landed or brought into this province: passed 12th May, 1722; recorded A. vol. II. page 284; expired.
250. An act for laying a duty on negroes imported into this province: passed 12th May, 1722: recorded A. vol. II. page 287; expired.
251. An act laying an excise or duty on all wine, rum, and other spirits, retailed in this province: passed 12th May, 1722: recorded A. vol. II. page 289; expired.

1719.

1721.

1722.



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1722.

- CHAPTER 252. An act to prevent the exportation of flour not merchantable; passed 12th May, 1722; recorded A. vol. II. page 293; supplied.
253. An act for encouraging the making of good beer, and for the consumption of grain in this province: passed 12th May, 1722; recorded A. vol. II. page 294; repealed 20th March, 1810.
254. A supplementary act to the act for the more effectual raising of county rates and levies: passed 12th May, 1722; recorded A. vol. II. page 296; repealed.
256. An act to prohibit the selling of rum, and other strong liquors, to the Indians, and to prevent abuses that may happen thereby: passed 22d May, 1722; recorded A. vol. II. page 302; obsolete.
257. An act for encouraging the raising of hemp within this province: passed 22d May, 1722; recorded A. vol. II. page 304; obsolete.
258. An act for settling a ferry at Solebury, in Bucks county, over Delaware, to New-Jersey: passed 22d May, 1722; recorded A. vol. II. page 305; expired.
259. An act to erect and establish a ferry on the lands of Thomas Yardly, of Makefield township, in Bucks county: passed 22d May, 1722; recorded A. vol. II. page 306; expired.
261. An act for the emitting and making current fifteen thousand pounds, in bills of credit: passed 2d March, 1722; recorded A. vol. II. page 228; obsolete.
264. An act for respiting executions upon judgments of courts in this province: passed 2d March, 1722; recorded A. vol. II. page 239; obsolete.
265. An act for vesting the lands and lots, commonly called The lands of the Free Society of Traders in Pennsylvania, in trustees, to be sold, for the payment of such sums of money as were paid into the public stock of the said society for purchasing the said lands and lots, and carrying on the trade designed by the said society: passed 2d March, 1722; recorded A. vol. II. page 253; private act; obsolete.
- 1723.
266. An act directing the process of summons against freeholders: passed 30th March, 1723; recorded A. vol. II. page 240; repealed; supplied.
267. A supplementary act to the act, entitled an act for emitting and making current fifteen thousand pounds, in bills of credit: passed 30th March, 1723; recorded A. vol. II. page 241; obsolete.
268. An additional act to the act, entitled an act for laying an excise or duty on all wine, rum and other spirits, retailed in this province: passed 30th March, 1723; recorded A. vol. II. page 242; expired.
269. An act for the encouragement of trade: passed 30th March, 1723; recorded A. vol. II. page 243; obsolete.
270. An act for regulating and establishing fees: passed 30th March, 1723; recorded A. vol. II. page 245. repealed; supplied.
271. A supplementary act, to an act entitled an act to prevent the exportation of flour not merchantable: passed 30th March, 1723; recorded A. vol. II. page 250; supplied.
272. A supplement to the act entitled an act for the making good beer, &c. passed 30th March, 1723; recorded A. vol. II. page 251; repealed 20th March, 1810.
273. An act for establishing a ferry over the river Schuylkill, at the end of the High-street of Philadelphia: passed 30th March, 1723; recorded A. vol. II. page 252; obsolete, and supplied by an act establishing a permanent bridge.

A. D.

1723.

CHAPTER 274. An act for the better and more effectual putting in execution an act of assembly of this province, entitled an act for the emitting and making current fifteen thousand pounds, in bills of credit: passed 11th May, 1723; recorded A. vol. II. page 275; obsolete.

275. An act for the emitting and making current thirty thousand pounds, in bills of credit: passed 12th December, 1723; recorded A. vol. II. page 259; obsolete.

276. An act laying an excise on all wine, rum, brandy, and other spirits, retailed in this province: passed 12th December, 1723; recorded A. vol. II. page 270; supplied; but the act supplying it, and all others, since repealed.

1724. 277. An act for continuing and establishing a ferry over Nesha-miney creek, on the king's high-road from Philadelphia to Bristol, in the county of Bucks: passed 9th May, 1724; recorded A. vol. II. page 276; expired.

278. An act to enable trustees to sell the old court-house and prison, belonging to the borough and county of Chester: passed 9th May, 1724; recorded A. vol. II. page 277; obsolete.

279. An act to improve the breed of horses, and regulate rangers: passed 9th May, 1724; recorded A. vol. II. page 278; repealed 20th March, 1810.

280. An act for the better enabling of John Cratho, merchant, Caspar Wistar, and Nicholas Gateau, to trade, and to buy and hold lands, in this province: passed 9th May, 1724; recorded A. vol. II. page 279; obsolete.

281. An act prescribing the forms of declaration of fidelity, abjuration and affirmation, instead of the forms heretofore required in such cases: passed 9th May, 1724; recorded A. vol. II. page 281; repealed.

1724-5. 282. An act to prevent the exportation of bread and flour not merchantable: passed 20th March, 1724-5; recorded A. vol. II. page 308; repealed; supplied.

283. An act to enable Jeremiah Langhorne, William Biles, Joseph Kirkbride, jun. Thomas Watson, practitioner in physic, and Abraham Chapman, to build a new court-house and prison in the county of Bucks: passed 20th March, 1724-5; recorded A. vol. II. page 310; obsolete.

284. An act for raising county rates and levies: passed 20th March, 1724-5; recorded A. vol. II. page 311; repealed.

286. An act for continuing the bounty upon hemp: passed 22d May, 1724-5; recorded A. vol. II. page 319; expired.

287. An act for the better securing the city of Philadelphia from the danger of gun-powder: passed 14th August, 1725; recorded A. vol. II. page 322; repealed.

1725-6. 289. An act for the re-emitting and continuing the currency of such bills of credit of this province, as by former acts are directed to be sunk and destroyed; and for the striking and making current ten thousand pounds, in new bills, to supply those that are torn and defaced: passed 5th March, 1725-6; recorded A. vol. II. page 326; obsolete.

290. An act for laying a duty on negroes imported into this province: passed 5th March 1725-6; recorded A. vol. II. page 335; expired.

291. An act for the better enabling of Bernard Vanleer, Arent Hassert, Michael Smiths, William Seliger, Arnold Bamberger, William Hilligart, and Ulrich Hageman, to trade and hold lands in this province: passed 5th March, 1725-6; recorded A. vol. II. page 334; private act; obsolete.

292. An act for the better regulating of negroes in this province: passed 5th March, 1725-6; recorded A. vol. II. page 338; repealed.



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- 1725-26. CHAPTER 293. An act for the better regulating the retailers of liquors near the iron-works, and elsewhere: passed 5th March, 1725-26; recorded A. vol. II. page 341; expired.
1727. 294. An act for the more effectual encouraging the raising of good hemp; and for continuing an excise on all wine, rum, brandy, and other spirits, retailed within this province: passed 6th May, 1727; recorded A. vol. II. page 343; expired.
296. A supplementary act to the act for ascertaining the number of members of assembly, and to regulate elections: passed 18th August, 1727; recorded A. vol. II. page 348; repealed.
297. An act for establishing a ferry from the city of Philadelphia to the landing, at or near the house of William Cooper; and another from or near the city bounds to Gloucester, in New-Jersey: passed 18th August, 1727; recorded A. vol. II. page 349; expired.
298. An act for the establishing of courts of judicature in this province: passed 27th August, 1727; recorded A. vol. II. page 352; repealed.
299. A supplement to the act for taking lands in execution for the payment of debts: passed August 27th, 1727; recorded A. vol. II. page 358; repealed.
1729. 300. An act for emitting of thirty thousand pounds, in bills of credit, for the better support of government, and the trade of this province: passed 10th May, 1729; recorded A. vol. II. page 371; obsolete.
302. A supplement to that part of the act, for raising county rates and levies, relating to the killing of wolves: passed 10th May, 1729; recorded A. vol. II. page 361; repealed.
304. An act for laying a duty on negroes imported into this province: passed 10th May, 1729; recorded A. vol. II. page 362; repealed.
305. An act for continuing and establishing a ferry from the landing place of Joseph Kirkbride, over Delaware river, at the Falls: passed 10th May, 1729; recorded A. vol. II. page 365; expired.
307. An act laying a duty on foreigners, and Irish servants, imported into this province: passed 10th May, 1729; recorded A. vol. II. page 368; repealed.
- 1729-30. 309. An act for the better enabling divers inhabitants of the province of Pennsylvania to hold lands, and to invest them with the privileges of natural-born subjects of the said province: passed 14th February, 1729-30; recorded A. vol. II. page 385.
310. An act for lending the sum of three hundred pounds, in bills of credit, for building a prison and court-house, in Lancaster county, &c. passed 14th February, 1729-30; recorded A. vol. II. page 386; obsolete.
312. A supplementary act to an act of assembly of this province, entitled an act against buying land of the natives: passed 14th February, 1729-30; recorded A. vol. II. page 390; obsolete.
313. An act laying an excise on all wine, rum, brandy, and other spirits, retailed in this province: passed 24th February, 1729-30; recorded A. vol. II. page 390; expired.
314. An act imposing a duty on persons convicted of heinous crimes, and to prevent poor and impotent persons being imported into the province of Pennsylvania: passed 24th February, 1729-30; recorded A. vol. II. page 393; supplied.

A. D.

- 1729-30. CHAPTER 316. An act for continuing the encouragement for raising good hemp within this province, and imposing certain penalties on persons manufacturing or working up unsound and unmerchantable hemp into cordage and cables : passed 14th February, 1729-30 ; recorded A. vol. II. page 404 ; repealed.
1730. 317. An act to remove the trustees of the General Loan-Office of Pennsylvania, and appointing others to execute the said trust : passed 15th August, 1730 ; recorded A. vol. II. page 407 ; obsolete.
318. An act to prevent the erecting wears, dams, &c. within the river Schuylkill : passed 15th August, 1730 ; recorded A. vol. II. page 410 ; repealed.
- 1730-31. 319. An act for re-emitting and continuing the currency of such bills of credit of this province, as by former acts are directed to be sunk and destroyed : passed 6th February, 1730-31 ; recorded A. vol. II. page 411 ; obsolete.
321. An act for amendment of the law, entitled an act for relief of insolvent debtors : passed 6th February, 1730-31 ; recorded A. vol. II. page 419 ; obsolete.
323. A supplement to the law entitled, an act to prevent the killing of deer out of season, and against carrying of guns and hunting by persons not qualified : passed 6th February, 1730-31 ; recorded A. vol. II. page 422 ; repealed.
324. An act for the better enabling divers inhabitants of the province of Pennsylvania, to hold lands, and to invest them with the privileges of natural born subjects of the said province : passed 6th February, 1730-31 ; recorded. A vol. II. page 423 ; obsolete.
325. An act for the relief of Benjamin Mayne, with respect to the imprisonment of his person : passed 6th February, 1730-31 ; recorded A. vol. II. page 425 ; private act ; obsolete.
326. An act to disable William Fishborne, from holding any office of trust or profit within this province, and to secure the payment of a provincial debt, due from the said William Fishbourne : passed 6th February, 1730-31 ; recorded A. vol. II. page 427 ; obsolete.
1731. 327. An act for reviving and continuing the proceedings of the courts of judicature, within this province : passed 27th November, 1731 ; recorded A. vol. III. page 1 ; obsolete.
- 1731-32. 328. An act for repealing an act, entitled an act for continuing the encouragement for raising good hemp within this province, &c. passed 10th January, 1731-32 ; recorded A. vol. III. page 3 ; expired.
1732. 329. An act directing the manner of payment of assemblymens' wages : passed 15th August, 1732 ; recorded A. vol. III. page 4 ; expired.
330. A supplementary act to the act for raising county rates and levies : passed 15th August, 1732 ; recorded A. vol. III. page 5 ; repealed.
- 1733-34. 331. An act for reviving an excise on wine, rum, brandy and other spirits : passed 19th January, 1733-34 ; recorded A. vol. III. page 13 ; expired.
332. An act to prevent the exportation of bread and flour not merchantable : passed 19th January, 1733-34 ; recorded A. vol. III. page 7 ; repealed 5th April, 1781.
333. An act for confirming the repeal of divers laws of this province : passed 19th January, 1733-34 ; recorded A. vol. III. page 21 ; obsolete.



A. D.

- 1733-34. CHAPTER 334. An act the better to enable William Fishbourne to discharge the debt due from him to the trustees of the General Loan-office of this province: passed 9th January, 1733-34; recorded A. vol. III. page 24; obsolete.
1734. 335. An act the more effectually to prevent the erecting of wears, dams, &c. within the river Schuylkill: passed 17th August, 1734; recorded A. vol. III. page 26; repealed.
- 1735: 336. A supplement to the several acts of assembly of this province for the relief of the poor: passed 29th March, 1735; recorded A. vol. III. page 29; repealed.
337. An act for confirming the election of the commissioners and assessors for the county of Bucks: passed 29th March, 1735; recorded A. vol. III. page 38; obsolete.
338. An act to prevent the damages which may happen by firing of woods: passed 29th March, 1735; recorded A. vol. III. page 41; repealed.
339. An act for the better enabling divers inhabitants of the province of Pennsylvania to hold lands, and to invest them with the privileges of natural born subjects of the said province: passed 29th March, 1735; recorded A. vol. III. page 43; obsolete.
340. An act for the more effectual vesting and settling certain lands in George M'Call, pursuant to the covenants and agreements of all the parties having any interest in the same: passed 24th June, 1735; recorded A. vol. II. page 428; private act.
- 1735-36 341. An act for the more easy and speedy recovery of small debts: passed 21st February, 1735-36; recorded A. vol. III. page 45; expired.
342. A supplement to the law for laying out of highways and public roads: passed 20th February, 1735-36; recorded A. vol. III. page 49; repealed.
343. An act for vesting the state-house, and other public buildings, with the lots of land whereon the same are erected, in trustees, for the use of this province: passed 20th February, 1735-36; recorded A. vol. III. page 51; repealed 17th February, 1762.
344. An act for regulating retailers of liquors near the iron-works: passed 20th February, 1735-36; recorded A. vol. III. page 53; expired.
1738. 345. An act to remove the trustees of the General Loan-office of Pennsylvania, and appointing others to execute the said trust: passed 25th August, 1738; recorded A. vol. III. page 55; obsolete.
346. An act for laying an excise on wine, rum, brandy, and other spirits: passed 25th August, 1738; recorded A. vol. III. page 59; expired.
347. A supplement to the act, entitled an act for imposing a duty on persons convicted of heinous crimes, and to prevent poor and impotent persons being imported into this province: passed 2d September, 1738; recorded A. vol. III. page 67; repealed.
- 1739: 348. An act for the more effectual preserving the credit of our paper money, and recovering the proprietary quit-rents: passed 19th May, 1739; recorded A. vol. III. page 69; expired.
349. An act for the better enabling divers inhabitants of the province of Pennsylvania to trade and hold lands within the said province: passed 19th May, 1739; recorded A. vol. III. page 72; obsolete.
350. A supplement to the act for electing members of assembly, &c. passed 19th May, 1739; recorded A. vol. III. page 76; amended and supplied.

A. D.

1739. CHAPTER 351. A supplement to an act of assembly of this province, entitled an act prescribing the forms of declarations of fidelity, abjuration and affirmation, instead of the forms heretofore required in such cases: passed 19th May, 1739; recorded A. vol. III. page 81; repealed.
352. An act for the more easy and speedy recovery of small debts: passed 19th May, 1739; recorded A. vol. III. page 84; expired.
353. An act for reprinting, exchanging and re-emitting, all the bills of credit of this province, and for striking the further sum of eleven thousand one hundred and ten pounds five shillings, to be emitted upon loan: passed 19th May, 1739; recorded A. vol. III. page 89; expired.
- 1742-43. 354. An act imposing a duty on persons convicted of heinous crimes, brought into this province, and not warranted by the laws of Great-Britain; and to prevent poor and impotent persons being imported into the same: passed 3d February, 1742-43; recorded A. vol. III. page 100; repealed.
355. An act for the more easy and speedy recovery of small debts: passed 3d February, 1742-43; recorded A. vol. III. page 108; expired.
356. An act for continuing and amending the act of assembly, entitled a supplement to the act for electing members of assembly, &c. passed 3d February, 1742-43; recorded A. vol. III. page 113; supplied.
357. An act for vesting the Province-Island, and the buildings thereon erected, and to be erected, in trustees, for providing an hospital for such sick passengers as shall be imported into this province, and to prevent the spreading of infectious distempers; passed 3d February, 1742-43; recorded A. vol. III. page 118; repealed.
358. An act for the more easy recovery of legacies within this province: passed 3d February, 1742-43; recorded A. vol. III. page 124; expired.
359. An act for naturalizing such foreign protestants as are settled or shall settle within this province, who, not being of the people called quakers, do conscientiously refuse the taking of any oath: passed 3d February, 1742-43; recorded A. vol. III. page 127; obsolete.
1744. 360. An act for laying an excise on wine, rum, brandy, and other spirits: passed 26th May, 1744; recorded A. vol. III. page 137; expired.
361. An act for the new appointment of trustees of the general loan-office of Pennsylvania, and for making current ten thousand pounds in new bills of credit, to exchange such of those now by law current as are torn and defaced: passed 26th May, 1744; recorded A. vol. III. page 131; expired.
362. An act for the speedy trial of capital offences, committed by any Indian or Indians, in the remote parts of this province: passed 19th October, 1744; recorded A. vol. III. page 146; obsolete.
- 1745-46. 363. An act for the re-emitting and continuing the loan of the bills of credit of this province: passed 1st March, 1745-46; recorded A. vol. III. page 166; expired.
364. An act for amending the several acts for electing members of assembly: passed 1st March, 1745-46; recorded A. vol. III. page 177; repealed.
365. An act for the more easy and speedy recovery of small debts: passed 1st March, 1745-46; recorded A. vol. III. page 154; repealed 20th March, 1810.



A. D.

- 1745-46. CHAPTER 366. A supplement to the act, entitled an act for erecting houses of correction and work houses in the respective counties; and to the act, entitled an act to enable Jeremiah Langhorne, &c. to build a court-house in the county of Bucks: passed 1st March, 1745-46; recorded A. vol. III. page 173; obsolete; supplied 28th February, 1810.
368. A supplementary act to the act, entitled an act for preventing the exportation of bread and flour not merchantable: passed 1st March, 1745-46; recorded A. vol. III. page 158; expired.
369. An act for the more effectual suppressing profane cursing and swearing: passed 7th March, 1745-46; recorded A. vol. III. page 147; repealed.
1746. 370. An act for granting five thousand pounds to the King's use, out of the bills of credit now remaining in the hands of the Trustees of the general loan-office, for exchanging torn and ragged bills, and for striking the like sum, to replace in their hands: passed 24th June, 1746; recorded A. vol. III. page 177; obsolete.
371. A supplement to the act, entitled an act for imposing a duty on persons convicted of heinous crimes, &c. passed 24th June, 1746; recorded A. vol. III. page 176; repealed.
1747. 372. An act for the continuance of an act, entitled an act for the better securing the city of Philadelphia from the danger of gun-powder: passed 8th May, 1747; recorded A. vol. III. page 181; repealed 6th February, 1783.
- 1748-49. 373. An act for the new appointment of trustees of the general loan-office of Pennsylvania, and for the making current five thousand pounds in new bills of credit, to exchange such of those now by law current as are torn and defaced: passed 4th February, 1748-49: recorded A. vol. III. page 183; obsolete.
374. An act for amending the laws relating to the partition and distribution of intestates estates: passed 4th February, 1748-49; recorded A. vol. III. page 192; repealed.
375. An act to regulate horse-jockeys, and dealers in horses, and to prevent the bringing into this province, for sale, such as are small, unsizeable, or unsound: passed 4th February, 1748-49; recorded A. vol. III. page 195; expired.
376. An act to encourage the killing of squirrels within this province: passed 4th February, 1748-49; recorded A. vol. III. page 190; expired.
1749. 378. A supplement to the act, entitled an act for imposing a duty on persons convicted of heinous crimes, and to prevent poor and impotent persons being imported into this province: passed 19th August, 1749; recorded A. vol. III. page 209; repealed.
379. An act for amending the laws relating to the poor: passed 19th August, 1749; recorded A. vol. III. page 176; repealed.
- 1749-50. 381. An act for prohibiting the importation of Germans, or other passengers, in too great numbers in any one vessel: passed 27th January, 1749-50; recorded A. vol. III. page 218; repealed 22d April, 1794.
382. An act for amending of the act, entitled an act to encourage the killing of squirrels, within this province: passed 27th January, 1749-50; recorded A. vol. III. page 224; expired.
383. An act for amending the laws of this province against killing of deer out of season: passed 27th January, 1749-50; recorded A. vol. III. page 221; repealed.
385. An act for the continuance of an act of Assembly of this province, entitled an act for the more easy recovery of legacies within this province: passed 27th January, 1749-50; recorded A. vol. III. page 225; expired.

A. D.

1750.

CHAPTER 386. An act for the continuance of an act of assembly of this province, entitled a supplementary act to the act, entitled an act for preventing the exportation of bread and flour not merchantable, and for the new appointment of officers to put the said law in execution: passed 18th August, 1750; recorded A. vol. III. page 211; expired.

1750-51.

389. An act for the better regulating the nightly watch within the city of Philadelphia, and for enlightening the streets, lanes and alleys of the said city, and for raising of money on the inhabitants of the said city, for defraying the necessary expenses thereof: passed 9th February, 1750-51; recorded A. vol. III. page 226; expired.

1752.

394. An act to regulate the assize of bread: passed 11th March, 1752; recorded A. vol. III. page 295; expired.

396. An act for directing the choice of inspectors in the counties of Chester, Lancaster, York, Cumberland, Berks and Northampton: passed 11th March, 1752; recorded A. vol. III. page 274; expired.

397. An act for preventing bribery and corruption in the election of sheriffs and coroners within this province: passed 11th March, 1752; recorded A. vol. III. page 301; obsolete.

1755.

400. An act to prevent the exportation of provisions, naval or warlike stores, from this province to Cape-Breton, or to any other the dominions of the French King, or places at present in possession of any of his subjects: passed 5th April, 1755; recorded A. vol. III. page 304; expired.

401. An act to continue an act, entitled an act to prevent the exportation of provisions, naval or warlike stores, from this province to Cape-Breton, or to any other the dominions of the French King, or places at present in the possession of any of his subjects: passed 18th June, 1755; recorded A. vol. III. page 308; expired.

402. An act for striking the sum of ten thousand pounds in bills of credit, to exchange such of those now by law current within this province, as are torn and defaced: passed June 28th, 1755; recorded A. vol. III. page 310; obsolete.

403. An act for extending so much of an act of parliament, entitled an act for punishing mutiny and desertion, and for the better payment of the army, and their quarters, passed in the twenty-eighth year of the present reign, as relates to the quartering and billeting of soldiers, and payment of their Quarters in that part of Great-Britain called England: passed 15th August, 1755; recorded A. vol. III. page 315; obsolete.

404. An act to continue an act, entitled an act for directing the choice of inspectors in the counties of Chester, Lancaster, York, Cumberland, Berks and Northampton: passed 27th September, 1755; recorded A. vol. III. page 365; expired.

405. An act for the better ordering and regulating such as are willing and desirous to be united for military purposes within this province: passed 25th November, 1755; recorded A. vol. III. page 342; obsolete.

406. An act for granting the sum of sixty thousand pounds to the King's use, and for striking fifty-five thousand pounds thereof in bills of credit, and to provide a fund for sinking the same: passed 27th November, 1755; recorded A. vol. III. page 328; obsolete.

407. An act for the relief of George Croghan and William Trent, for and during the space of ten years: passed 3d December, 1755; recorded A. vol. III. page 317; repealed.



A. D.

1756.

CHAPTER 408. An act for dispersing the inhabitants of Novo-Scotia, imported into this province, into the several counties of Philadelphia, Bucks, Chester and Lancaster, and the townships thereof, and making provision for the same: passed 5th March, 1756; recorded A. vol. III. page 320; repealed.

409. An act for regulating the officers and soldiers commissioned and raised by the Governor, for the defence of this province: passed 15th April, 1756; recorded A. vol. III. page 325; repealed.

410. An act for the more effectual obstructing the exportation of provisions and warlike stores from the province of Pennsylvania: passed 18th May, 1756; recorded A. vol. III. page 346; expired.

411. An act for regulating and continuing the nightly watch, and enlightening the streets, lanes and alleys, of the city of Philadelphia, and for raising of money on the inhabitants and estates of the said city, for defraying the necessary expenses thereof: passed 15th September, 1756; recorded A. vol. III. page 349; expired.

412. An act for striking the sum of thirty thousand pounds in bills of credit, and giving the same to the king's use and for providing a fund to sink the bills so to be emitted, by laying an excise upon wine, rum, brandy, and other spirits: passed 21st September, 1756; recorded A. vol. IV. page 1; repealed.

413. An act for the relief of Joseph Yeates, a languishing prisoner in the gaol of Philadelphia, with respect to the imprisonment of his person: passed 21st September, 1756; recorded A. vol. III. page 366; private act; obsolete.

414. An act for regulating the officers and soldiers commissioned and raised by the governor, for the defence of this province: passed 4th November, 1756; recorded A. vol. III. page 369; expired.

415. An act for extending several sections of an act of parliament, passed in the twenty-ninth year of the present reign, entitled an act for punishing mutiny and desertion, and for the better payment of the army, and their quarters: passed 8th December, 1756; recorded A. vol. III. page 371; expired.

1757.

416. An act for binding out and settling such of the inhabitants of Nova-Scotia, imported into this province, as are under age, and for maintaining the aged, sick and maimed, at the charge of the province: passed 18th January, 1757; recorded A. vol. III. page 372; obsolete.

417. An act for regulating the officers and soldiers commissioned and raised by the governor, for the defence of this province, and for repealing the act of general assembly, passed in the present reign, for the same purposes: passed 18th January, 1757; recorded A. vol. III. page 377; expired.

418. A supplement to the act, entitled an act for regulating and continuing the nightly watch, and enlightening the streets, lanes and alleys, of the city of Philadelphia, and for raising of money on the inhabitants and estates of the said city, for defraying the necessary expenses thereof: passed 18th January, 1757; recorded A. vol. III. page 374; expired.

419. An act for the further continuance of an act of general assembly of this province, entitled an act for the more easy recovery of legacies within this province: passed 17th March, 1757; recorded A. vol. IV. page 15; expired.

420. An act to render the quartering of soldiers on the public-houses of this province less burthensome: passed 17th March, 1757; recorded A. vol. IV. page 16; expired.

A. D.

1757.

## CHAPTER

421. An act for regulating the hire of carriages to be employed in his majesty's service, within the inhabited parts of this province: passed 17th March, 1757; recorded A. vol. IV. page 18; expired.

422. A supplement to the act, entitled an act for granting the sum of sixty thousand pounds to the king's use, and for striking fifty-five thousand pounds thereof in bills of credit, and to provide a fund for sinking the same, and for granting to his majesty the additional sum of one hundred thousand pounds: passed 23d March, 1757; recorded A. vol. IV. page 21; expired.

423. An act for striking the sum of fifty-five thousand pounds, the remainder of the sum of one hundred thousand pounds granted by the assembly to the king's use, and for making the same current within this province: passed 17th June, 1757; recorded A. vol. IV. page 26; expired.

424. An act empowering the governor to discharge his part of the operations of this campaign, stipulated, in behalf of this province, between his Excellency John Earl of Loudoun, and the governors of the southern colonies: passed 18th June, 1757; recorded A. vol. IV. page 32; obsolete.

425. An act to enable the governor, to draw out and march one thousand men, part of the troops of this province, or the like number of volunteers, to be raised for the assistance of the province of New-York: passed 19th August, 1757; recorded A. vol. IV. page 34; obsolete.

426. A supplement to an act, entitled an act for binding out and settling such of the inhabitants of Nova-Scotia, imported into this province, as are under age, and for maintaining the aged, sick and maimed, at the charge of the province: passed 27th September, 1757; recorded A. vol. IV. page 37; obsolete.

427. An act to enable Richard Hill and Samuel Preston Moore, and Hannah his wife, to comply with, establish, ratify and confirm certain agreements, made between the said Samuel Preston Moore and Richard Hill, late of the city of Philadelphia, jointly of the one part, and divers other persons of the other part; and also between the said Richard Hill, deceased, separately, of the one part, and divers other persons of the other part; which were entered into by them in the life-time of the said Richard Hill, deceased, some of whose heirs and devisees are under age: passed 27th September, 1757; recorded A. vol. IV. page 39; private act; obsolete.

1758.

428. An act for preventing abuses in the Indian trade, for supplying the Indians, friends and allies of Great-Britain, with goods at more easy rates, and for securing and strengthening the peace and friendship lately concluded with the Indians, inhabiting the northern and western frontiers of this province: passed 8th April, 1758; recorded A. vol. IV. page 42; expired.

429. An act for regulating the hire of carriages to be employed in his majesty's service: passed 8th April, 1758; recorded A. vol. IV. page 53; expired.

430. An act for regulating the officers and soldiers commissioned and raised by the governor, for the defence of this province: passed 8th April, 1758; recorded A. vol. IV. page 51; expired.

431. An act for granting the sum of one hundred thousand pounds to his majesty's use, and for striking the same in bills of credit; and for continuing the several acts of assembly of this province, herein after mentioned, for sinking the bills of credit so to be struck, at the times and in the manner herein after directed and appointed: passed 22d April, 1758; recorded A. vol. IV. page 65; expired.



A. D.

1758.

CHAPTER 432. An act for granting to his majesty a duty of tonnage upon ships and vessels, and also certain duties upon wine, rum, brandy, and other spirits, and a duty upon sugar, for supporting and maintaining the provincial ship of war, for protecting the trade of this province, and other purposes for his majesty's service: passed 29th April, 1758; recorded A. vol. IV. page 57; expired.

433. An act for extending several sections of an act of parliament, passed in the thirtieth year of the present reign, entitled an act for punishing mutiny and desertion, and for the better payment of the army, and their quarters: passed 29th April, 1758; recorded A. vol. IV. page 56; expired.

434. A supplement to the act, entitled an act for regulating the hire of carriages to be employed in his majesty's service: passed 20th September, 1758; recorded A. vol. IV. page 77; expired.

435. An act for the continuance of an act of assembly of this province, entitled a supplementary act to the act, entitled an act for preventing the exportation of bread and flour not merchantable; and for the new appointment of officers to put the said law in execution: passed 27th September, 1758; recorded A. vol. IV. page 79; expired.

436. An act in addition to an act, entitled an act, for regulating the hire of carriages to be employed in his majesty's service: passed 29th September, 1758; recorded A. vol. IV. page 81; expired.

1759.

437. An act for granting to his majesty the sum of one hundred thousand pounds, and for striking the same in bills of credit, in the manner herein after directed, and for providing a fund for sinking the said bills of credit, by a tax on all estates real and personal, and taxables, within this province: passed 17th April, 1759; recorded A. vol. IV. page 83; expired.

438. A supplement to the act, entitled an act for preventing abuses in the Indian trade, for supplying the Indians, friends and allies of Great-Britain, with goods at more easy rates, and for securing and strengthening the peace and friendship lately concluded with the Indians, inhabiting the northern and western frontiers of this province: passed 17th April, 1759; recorded A. vol. IV. page 105; expired.

440. A supplement to the act, entitled an act for granting to his majesty a duty of tonnage upon ships and vessels, and also certain duties upon wine, rum, brandy, and other spirits, and a duty upon sugar, for supporting and maintaining the provincial ship of war, for protecting the trade of this province, and other purposes for his majesty's service: passed 21st April, 1759; recorded A. vol. IV. page 151; expired.

441. An act for extending several sections of an act of parliament, passed in the thirty-second year of the present reign, entitled an act for punishing mutiny and desertion, and for the better payment of the army, and their quarters: passed 21st April, 1759; recorded A. vol. IV. page 111; expired.

442. An act for regulating the hire of carriages to be employed in his majesty's service: passed 21st April, 1759; recorded A. vol. IV. page 53; expired.

443. An act for regulating the officers and soldiers in the pay of this province: passed 21st April, 1759; recorded A. vol. IV. page 108; expired.

444. An act for re-emitting the bills of credit of this province heretofore re-emitted on loan, and for striking the further sum of thirty-six thousand six hundred and fifty pounds, to enable the trustees to lend fifty thousand pounds to Colonel John Hunter, agent for the contractors with the right honourable the lords commissioners of his majesty's treasury, for his majesty's service: passed 20th June, 1759; recorded A. vol. IV. page 113; repealed.

- CHAPTER 445. An act for the relief of the heirs, devisees and assigns of persons born out of the king's legiance, who have been owners of lands within this province, and have died unnaturalized: passed 20th June, 1759; recorded A. vol. IV. page 132; repealed.
446. An act for the more effectual suppressing and preventing of lotteries and plays: passed 20th June, 1759; recorded A. vol. IV. page 149; repealed.
447. An act for recording of warrants and surveys, and for rendering the real estates and property within this province more secure: passed 7th July, 1759; recorded A. vol. IV. page 133; repealed.
448. A supplement to the act, entitled an act for re-emitting the bills of credit of this province heretofore re-emitted on loan, and for striking the further sum of thirty-six thousand six hundred and fifty pounds, to enable the trustees to lend fifty-thousand pounds to Colonel John Hunter, agent to the contractors with the right honourable the lords commissioners of his majesty's treasury, for his majesty's service: passed 29th September, 1759; recorded A. vol. IV. page 140; repealed.
449. An act for appointing an agent, to apply for and receive the distributive share and proportion which shall be assigned to this province, of the sum of money granted by parliament to his majesty's colonies in America: passed 29th September, 1759; recorded A. vol. IV. page 147; obsolete.
450. A supplement to the act, entitled an act for establishing courts of judicature in this province: passed 29th September, 1759; recorded A. vol. IV. page 144; repealed.
451. An act to continue an act, entitled an act for directing the choice of inspectors in the counties of Chester, Lancaster, York, Cumberland, Berks and Northampton: passed 27th September, 1759; recorded A. vol. IV. page 149; expired.
452. An act for the further continuance of an act of assembly of this province, entitled an act for the continuance of an act of assembly of this province, entitled a supplementary act to the act, entitled an act for the preventing the exportation of bread and flour not merchantable, and for the new appointment of officers to put the said law in execution: passed 19th October, 1759; recorded A. vol. IV. page 150; expired.
1760. 453. An act for granting to his majesty the sum of one hundred thousand pounds, and for striking the same in bills of credit, in the manner hereinafter directed, and for providing a fund for sinking the said bills of credit, by a tax on all estates, real and personal, and taxables, within this province: passed 12th April, 1760; recorded A. vol. IV. page 157; expired.
457. An act for regulating the officers and soldiers in the pay of this province: passed 21st April, 1760; recorded A. vol. IV. page 195; expired.
1761. 459. An act for regulating waggoners, carters, draymen, and porters, within the city of Philadelphia, and for other purposes therein mentioned: passed 14th March, 1761; recorded A. vol. IV. page 232; expired.
460. An act to regulate the assize of bread: passed 14th March, 1761; recorded A. vol. IV. page 235; expired.
461. An act to enable Thomas Yorke, James Child, Daniel Rundle, Peter Chevalier, and Enoch Story, or any three of them, to sell the provincial ship of war: passed 14th March, 1761; recorded A. vol. IV. page 237; obsolete.



A. D.

1761. CHAPTER 464. An act for raising, paying and cloathing three hundred men, properly officered, for relieving the several forts and posts within the communication to Pittsburgh, and for continuing an act for regulating the officers and soldiers in the pay of this province: passed 14th March, 1761; recorded A. vol. IV. page 240; expired.
466. An act to enable certain trustees to sell lands in the county of Philadelphia, settled in trust, for the use of the minister of Oxford church, and to receive the voluntary donations of the inhabitants; and, with the money arising therefrom, to purchase other lands, to be settled to the same use: passed 14th March, 1761; recorded A. vol. IV. page 228; private act; obsolete.
467. An act for laying a duty on negroes and mulatto slaves, imported into this province: passed 14th March, 1761; recorded A. vol. IV. page 215; repealed 1st March, 1780.
468. A supplement to an act, entitled an act for laying a duty on negroes, and mulatto slaves, imported into this province: passed 22d April, 1761; recorded A. vol. IV. page 242; repealed.
469. A supplement to an act, entitled an act to prevent the exportation of bad or unmerchantable staves, heading, boards, and timber: passed 22d April, 1761; recorded A. vol. IV. page 239; repealed.
470. An act for appointing certain persons, herein after named, to apply and receive the distributive shares and proportions, which are or shall be allotted to this province, out of the sum or sums of money granted, or to be granted, by parliament to his majesty's colonies in America: passed 26th September, 1761; recorded A. vol. IV. page 258; obsolete.
471. An act for the relief of William Griffiths, with respect to the imprisonment of his person: passed 26th September, 1761; recorded A. vol. IV. page 253; private act; obsolete.
1762. 476. An act for the recovery of the duties of tonnage upon ships and vessels, and certain other duties upon wine, rum, brandy and other spirits, and upon sugar, which became due by virtue of a law of this province lately expired, and which were not received or secured during the continuance thereof, and for appropriating the surplus of the said duties: passed 17th February, 1762; recorded A. vol. IV. page 307; obsolete.
479. An act for opening and better amending, and keeping in repair, the public roads and highways within this province: passed 17th February, 1762; recorded A. vol. IV. page 264; expired; supplied.
480. An act for regulating, pitching, paving and cleansing the highways, streets, lanes and alleys, and for regulating, making and amending the water-courses and common sewers within the inhabited and settled parts of the city of Philadelphia, and for raising of money to defray the expenses thereof: passed 26th March, 1762; recorded A. vol. IV. page 318; expired.
483. An act for granting to his majesty the sum of twenty-three thousand five hundred pounds, for the purposes therein mentioned: passed 14th May, 1762; recorded A. vol. IV. page 334; expired.
1763. 484. An act to prevent and remove certain nuisances in and near the city of Philadelphia: passed 4th March, 1763; recorded A. vol. IV. page 401; expired.

A. D.

1763.

## CHAPTER

485. A supplement to the act, entitled an act for regulating, pitching, paving and cleansing the highways, streets, lanes, and alleys, and for regulating, making and amending the water courses and common sewers within the inhabited and settled parts of the city of Philadelphia, and for raising of money to defray the expenses thereof: passed 4th March, 1763; recorded A. vol. IV. page 378; expired.
486. An act for the regulation of apprentices within this province: passed 4th March, 1763; recorded A. vol. IV. page 395; expired.
487. An act to continue an act, entitled an act for regulating waggoners, carters, draymen, and porters, within the city of Philadelphia, and for other purposes therein mentioned: passed 4th March, 1763; recorded A. vol. IV. page 423; obsolete.
488. An act for the relief of persons, whose apprentices or servants have enlisted in the late king's or his present majesty's service: passed 4th March, 1763; recorded A. vol. IV. page 414; expired.
489. An act directing the choice of inspectors, and for holding the general elections in the counties of Lancaster, York, Cumberland, Berks, and Northampton: passed 4th March, 1763; recorded A. vol. IV. page 388; expired.
491. A supplement to an act, entitled an act to enable the owners and possessors of a certain tract of marsh and meadow land, therein described, situate in the counties of Philadelphia and Chester, to keep the banks, dams, sluices and flood-gates in repair, and to raise a fund to defray the expense thereof: passed 4th March, 1763; recorded A. vol. IV. page 421; private act.
492. An act for enlarging and extending the southern district of Darby marsh or meadow ground: passed 4th March, 1763; recorded A. vol. IV. page 410; private act.
493. An act the better to enable the persons therein named to hold lands, and to invest them with the privileges of natural born subjects of this province: passed 4th March, 1763; recorded A. vol. IV. page 418; private act.
494. An act for altering and enlarging the time of holding the courts of general quarter sessions of the peace and gaol delivery, in the county of Bucks, and for enlarging the time of holding the courts of general quarter sessions of the peace and gaol delivery, in the county of Chester: passed 4th March, 1763; recorded A. vol. IV. page 413; repealed and supplied.
495. A supplement to the act, entitled an act for opening and better amending and keeping in repair, the public roads and highways within this province: passed 4th March, 1763; recorded A. vol. IV. page 416; expired.
496. An act to enable certain persons, therein named, to erect a court-house at Easton, in the county of Northampton, and to levy a tax on the inhabitants of the said county, to defray the expense thereof: passed 4th March, 1763; recorded A. vol. IV. page 420; obsolete.
497. An act for regulating the fines imposed upon the assessors chosen or to be chosen, in this province: passed 4th March, 1763; recorded A. vol. IV. page 405; expired.
499. An act for preventing abuses in the Indian trade, and for securing and strengthening the peace and friendship, lately concluded with the Indians inhabiting the northern and western frontiers of this province: passed 2d April, 1763; recorded A. vol. IV. page 424; expired.
500. An act for regulating the hire of carriages to be employed in his majesty's service: passed 8th July, 1763; recorded A. vol. IV. page 433; expired.



A. D.

1763.

CHAPTER 501. An act for regulating the officers and soldiers in the pay of this province: passed 8th July, 1763; recorded A. vol. IV. page 437; expired.

502. An act for erecting a light-house at the mouth of the bay of Delaware, at or near Cape-Henlopen, for placing and fixing buoys in the said bay and river Delaware, and for appointing commissioners to receive, collect and recover, certain sums of money, heretofore raised by way of lottery, and to appropriate the same to the purposes aforesaid: passed 30th September, 1763; recorded A. vol. IV. page 441; supplied.

503. An act to enable the commissioners for paving the streets of the city of Philadelphia, to settle the accounts of the managers, and to sue for and recover, from several persons, such sums of money as are now due and unpaid, on account of the several lotteries set up and drawn for paving the streets of the said city: passed 30th September, 1763; recorded A. vol. IV. page 444; obsolete.

504. An act to continue an act, entitled an act for regulating and continuing the nightly watch, and enlightening the streets, lanes and alleys of the city of Philadelphia, and for raising money on the inhabitants and estates of the said city, for defraying the necessary expenses thereof: passed 30th September, 1763; recorded A. vol. IV. page 447; expired.

505. An act for granting to his majesty the sum of twenty-four thousand pounds, for the defence and protection of this province, and for other purposes therein mentioned: passed 22d October, 1763; recorded A. vol. IV. page 448; obsolete.

506. An act to prohibit the selling of guns, gunpowder, or other warlike stores, to the Indians: passed 22d October, 1763; recorded A. vol. IV. page 461; expired.

507. An act for regulating the officers and soldiers in the pay of this province: passed 22d October, 1763; recorded A. vol. IV. page 456; expired.

1764.

508. An act for preventing tumults and riotous assemblies, and for the more speedy and effectual punishing the rioters: passed 3d February, 1764; recorded A. vol. IV. page 462; expired.

509. An act for the payment of ten thousand nine hundred and forty-seven pounds sterling, in certain proportions, to several colonies in America: passed 23d March, 1764; recorded A. vol. IV. page 465; obsolete.

511. An act for the relief of Samuel Wallis, a prisoner in the gaol of Philadelphia, with respect to the imprisonment of his person: passed 23d March, 1764; recorded A. vol. V. page 4; private act; obsolete.

512. A supplement to the act, entitled an act for the better settling intestates estates, and for repealing one other act of general assembly of this province, entitled an act for amending the laws relating to the partition and distribution of intestates estates: passed 23d May, 1764; recorded A. vol. V. page 8; repealed 19th April, 1794.

513. An act for granting to his majesty the sum of fifty-five thousand pounds, and for striking the same in bills of credit, in the manner herein after directed, and for providing a fund for sinking the said bills of credit, by a tax on all estates, real and personal, and taxables, within this province: passed 30th May, 1764; recorded A. vol. V. page 13; obsolete.

A. D.

1764.

## CHAPTER

514. An act for regulating the officers and soldiers in the pay of this province, and for continuing an act, entitled an act for regulating the hire of carriages to be employed in his majesty's service: passed 30th May, 1764; recorded A. vol. V. page 30; expired.

515. A supplement to the act, entitled an act for the erecting a light-house at the mouth of the bay of Delaware, at or near Cape-Henlopen, for placing and fixing buoys in the said bay and river Delaware, and for appointing commissioners to receive, collect and recover, certain sums of money, heretofore raised by way of lottery, and to appropriate the same to the purposes aforesaid: passed 22d September, 1764; recorded A. vol. V. page 34; repealed.

516. A supplement to the act, entitled an act for granting to his majesty the sum of twenty-four thousand pounds, for the defence and protection of this province, and for other purposes therein mentioned: passed 22d September, 1764; recorded A. vol. V. page 39; obsolete.

1765.

517. An act for raising by way of lottery, the sum of three thousand and three pounds fifteen shillings, to be applied to the payment of the arrears of debt due for the finishing St. Peter's and St. Paul's episcopal churches, in the city of Philadelphia; and towards finishing the episcopal church at Carlisle; and the building of an episcopal church in each of the towns of York and Reading; and repairing the episcopal church at Molattin, in Berks county; and the episcopal church in Huntingdon township, in York county; and for repairing the episcopal churches at Chichester and Concord; and purchasing a glebe for the church at Chester, in the county of Chester: passed 15th February, 1765; recorded A. vol. V. page 53; private act; obsolete.

518. A supplement to an act, entitled an act for the relief of insolvent debtors within the province of Pennsylvania: passed 2d February, 1765; recorded A. vol. V. page 40; repealed and obsolete.

519. An act for the relief of Walter Davies, a languishing prisoner in the gaol of Philadelphia, with respect to the imprisonment of his person: passed 2d February, 1765; recorded A. vol. V. page 46; private act; obsolete.

520. An act for the relief of James Pearson, a prisoner in the gaol of Philadelphia, with respect to the imprisonment of his person: passed 2d February, 1765; recorded A. vol. V. page 49; private act; obsolete.

521. An act the better to enable the persons therein named to hold lands, and to invest them with the privileges of natural born subjects of this province: passed 2d February, 1765; recorded A. vol. V. page 42; private act; obsolete.

522. An act for the relief of Robert Lettis Hooper, junior, a prisoner in the gaol of Philadelphia, with respect to the imprisonment of his person: passed 2d February, 1765; recorded A. vol. V. page 43; private act; obsolete.

523. An act for amending each and every of the acts of assembly of this province heretofore made, for embanking and draining several parcels of marshy land, situate in the counties of Philadelphia and Chester, and for repairing and maintaining the banks, dams and sluices, thereunto belonging: passed 15th February, 1765; recorded A. vol. V. page 74; private act.



A. D.

1765.

## CHAPTER

524. A supplement to an act, entitled a supplement to the act, entitled an act for regulating, pitching, paving, and cleansing the highways, streets, lanes and alleys, and for regulating, making and amending the water courses and common sewers, within the inhabited and settled parts of the city of Philadelphia, and for raising of money to defray the expense thereof: passed 15th February, 1765; recorded A. vol. V. page 52; supplied.
526. An act for opening and better amending, and keeping in repair, the public roads and highways within this province: passed 18th May, 1765; recorded A. vol. V. page 85; expired; (supplied.)
527. A supplement to the act, entitled an act for the prohibiting the importation of Germans, or other passengers, in too great numbers in any one vessel: passed 18th May, 1765; recorded A. vol. V. page 78; supplied.
528. An act to enable the inhabitants of the borough of Lancaster, in the county of Lancaster, to raise money, on themselves, for supporting a nightly watch in said borough, and for other purposes therein mentioned: passed 20th Sept. 1765; recorded A. vol. V. page 97; repealed; (since supplied.)
529. An act for the more easy recovery of legacies: passed 20th September, 1765; recorded A. vol. V. page 95; repealed, and supplied by chap. 654, page 383.
530. An act to enable the commissioners herein after named to settle the accounts of the managers, and to sue for and recover from several persons such sums of money as are now due and unpaid on account of a lottery, set up and drawn, for erecting a bridge over Skippack creek, in the county of Philadelphia; and to receive the voluntary donations and subscriptions of the inhabitants towards the better perfecting the said bridge: passed 20th September, 1765; recorded A. vol. V. page 92; expired.
531. An act to explain and amend a supplement to an act, entitled an act for the relief of insolvent debtors within the province of Pennsylvania: passed 20th Sept. 1765; recorded A. vol. V. page 91; (virtually repealed by chap. 1713.)
532. A supplement to the act, entitled an act to continue an act, entitled an act for regulating and continuing the nightly watch, and enlightening the streets, lanes and alleys of the city of Philadelphia, and for raising of money on the inhabitants and estates of the said city, for defraying the expenses thereof: passed 8th February, 1766; recorded A. vol. V. page 115; expired.
534. An act for the better employment, relief and support of the poor within the city of Philadelphia, the district of Southwark, the townships of Moyamensing and Passyunk, and the Northern Liberties: passed 8th February, 1766; recorded A. vol. V. page 122; repealed 29th March, 1803, chap. 2357.
535. An act to prevent the destruction of small rock-fish, and taking of oysters, and bringing them into this province, out of season: passed 8th February, 1766; recorded A. vol. V. page 109; repealed.
536. An act for appointing wardens for the port of Philadelphia, and for the regulating pilots plying in the river and bay of Delaware, and the price of pilotage to and from the said port: passed 8th February, 1766; recorded A. vol. V. page 129; expired.
537. A supplement to the act, entitled a supplement to the act, entitled an act for regulating, pitching, paving and cleansing the highways, streets, lanes and alleys, of the city of Philadelphia, &c. passed 8th February, 1766; recorded A. vol. V. page 120; expired.

1766.



A. D.  
1766.

- CHAPTER 538. An act to prolong the time limited for drawing the lottery, instituted and directed to be drawn in and by virtue of an act, entitled an act for raising by way of lottery, the sum of three thousand and three pounds fifteen shillings, to be applied to the payment of the arrears of debt due for the finishing St. Peter's and St. Paul's episcopal churches, in the city of Philadelphia, &c. and for appointing a manager, in the room of Henry Harrison, Esquire, deceased: passed 8th February, 1766; recorded A. vol. V. page 111; obsolete.
539. An act directing the choice of inspectors, and for holding the general elections in this province: passed 8th February, 1766; recorded A. vol. V. page 138; repealed and supplied.
540. A supplement to the act, entitled a supplement to the act, entitled an act for erecting a light-house at the mouth of the bay of Delaware, at or near Cape-Henlopen, for placing and fixing buoys in the said bay and river Delaware, and for appointing commissioners to receive, collect and recover certain sums of money, heretofore raised by way of lottery, and to appropriate the same to the purposes aforesaid: passed 8th February, 1766; recorded A. vol. V. page 117; repealed.
541. An act to repeal the act, entitled an act to enable the inhabitants of the borough of Lancaster, in the county of Lancaster, to raise money on themselves, for supporting a nightly watch in the said borough, and for other purposes therein mentioned: passed 8th February, 1766; recorded A. vol. V. page 110; (since revived.)
542. An act for granting to his majesty the sum of four thousand pounds, out of the money now remaining in the hands of the provincial treasurer: passed 20th September, 1766; recorded A. vol. V. page 148; obsolete.
543. An act the better to enable the persons therein named, to hold lands, and to invest them with the privileges of natural born subjects of this province: passed 20th September, 1766; recorded A. vol. V. page 177; private act; obsolete.
544. A supplement to the act, entitled an act to enable certain persons, therein named, to erect a court-house at Easton, in the county of Northampton, and to levy a tax on the inhabitants of the said county, to defray the expense thereof: passed 20th September, 1766; recorded A. vol. V. page 149; obsolete.
545. A supplement to the act, entitled an act to prolong the time limited for drawing the lottery, instituted and directed to be drawn in and by virtue of an act, entitled an act for raising, by way of lottery, the sum of three thousand and three pounds fifteen shillings, to be applied to the payment of the arrears of debt due for the finishing of St. Peter's and St. Paul's episcopal churches, in the city of Philadelphia, &c. passed 20th September, 1766; recorded A. vol. V. page 146; obsolete.
546. An act to enable the commissioners, herein after named, to settle the accounts of the managers, and to sue for and recover, from several persons, such sums of money as are now due and unpaid, on account of the lottery set up and drawn for erecting a house of worship at the town of Carlisle, in the county of Cumberland, for the use of the first Presbyterian congregation, under the pastoral care of John Steel, minister: passed 20th September, 1766; recorded A. vol. V. page 151; obsolete.

A. D.

1766.

CHAPTER 547. A supplement to an act, entitled an act for granting to his majesty the sum of fifty-five thousand pounds, and for striking the same in bills of credit, and for providing a fund for sinking the said bills of credit, by a tax on all estates, real and personal, and taxables, within this province: passed 20th September, 1766; recorded A. vol. V. page 147; obsolete.

1767.

548. An act to amend the act, entitled an act to prevent the exportation of bread and flour not merchantable: passed 21st February, 1767; recorded A. vol. V. page 164; repealed and supplied.

550. An act for the relief of Thomas Reilly, and John Whittane, languishing prisoners in the gaol of Philadelphia, with respect to the imprisonment of their persons: passed 21st February, 1767; recorded A. vol. V. page 173; private act; obsolete.

551. An act to enable the commissioners, therein after named, to settle the accounts of the managers, and to sue for and recover, from several persons, their executors, administrators and assigns, such sums of money as are now due and unpaid, on account of the lottery set up and drawn for erecting a house of worship in the borough of Lancaster, for the use of the Presbyterian congregation in and about the said borough: passed 21st February, 1767; recorded A. vol. V. page 158; obsolete.

552. An act, for amending the act, entitled an act for the better employment, relief and support of the poor, within the city of Philadelphia, the district of Southwark, the townships of Moyamensing and Passyunk, and the Northern Liberties: passed 21st February, 1767; recorded A. vol. V. page 166; repealed 29th March, 1803.

553. An act to regulate the fishery in the river Schuylkill: passed 21st February, 1767; recorded A. vol. V. page 154.

554. An act for amending the act, entitled a supplement to the act, entitled a supplement to the act, entitled an act for regulating, pitching, paving and cleansing the highways, streets, lanes and alleys, and for regulating, making and amending the water courses and common sewers, within the inhabited and settled parts of the city of Philadelphia, and for raising money to defray the expense thereof: passed 21st February, 1767; recorded A. vol. V. page 160; repealed and supplied.

559. An act for raising the sum of twenty thousand pounds, for the support of the government of this province, and payment of the public debts: passed 20th May, 1767; recorded A. vol. V. page 194.

561. An act for appointing wardens for the port of Philadelphia, and for the better regulating pilots plying in the river and bay of Delaware, and price of pilotage to and from the said port: passed 20th May, 1767; recorded A. vol. V. page 168; expired.

563. An act for confirming the estate of Philip Fox, in certain lands, mortgaged in the general loan-office, some of the title deeds whereof, there deposited, are lost: passed 20th May, 1767; recorded A. vol. V. page 201; private act; obsolete.

564. An act to enable the owners and possessors of League-Island, to keep the bank, dams and sluices, in good repair for ever, and to raise a fund to defray the expenses thereof: passed 20th May, 1767; recorded A. vol. V. page 179; repealed.



A. D.

1767.

CHAPTER 565. An act for raising, by way of lottery, the sum of four hundred and ninety-nine pounds, nineteen shillings, to be applied to the payment of the arrears of debt due for the building and finishing the German Lutheran church in Earl township, in Lancaster county, and towards the erecting and building a school-house to the same church: passed 20th May, 1767; recorded A. vol. V. page 206; private act; obsolete.

566. An act for the relief of Thomas Cotterell Grove, Frederick Pepler, Samuel Watts, Azariah Vaun, Thomas Mullan, Matthew Warburton, James Martin, and Thomas Lemon, languishing prisoners in the gaol of Philadelphia, Chester and Lancaster, with respect to the imprisonment of their persons: passed 20th May, 1767; recorded A. vol. V. page 203; private act; obsolete.

567. An act to enable the managers of the contributions for the relief and employment of the poor, in the city of Philadelphia, to borrow the further sum of three thousand pounds: passed 26th September, 1767; recorded A. vol. V. page 216; obsolete.

568. An act for obliging the sheriffs and treasurers of the several counties within this province, and the collector of the duties of tonnage, to give sufficient sureties for the faithful execution of their trust: passed 26th September, 1767; recorded A. vol. V. page 218; (supplied as to sheriffs and treasurers; the rest obsolete)

569. An act for the support of the government of this province, and payment of the public debts: passed 26th September, 1767; recorded A. vol. V. page 221; obsolete.

1768.

570. An act to remove the persons now settled, and to prevent others from settling, on any lands in this province, not purchased of the Indians: passed 3d February, 1768; recorded A. vol. V. page 222; obsolete.

571. An act for raising and applying the sum of three thousand pounds, towards removing the present discontent of the Indians, regaining their friendship, and for other purposes therein mentioned: passed 17th February, 1768; recorded A. vol. V. page 224; obsolete.

572. An act to continue an act, entitled an act for laying a duty on negroes and mulatto slaves, imported into this province, and another act, entitled a supplement to an act, entitled an act for laying a duty on negroes and mulatto slaves, imported into this province: passed 20th February, 1768; recorded A. vol. V. page 227; expired.

573. An act to amend the act, entitled an act for the better employment, relief and support of the poor, within the city of Philadelphia, the district of Southwark, the townships of Moyamensing and Passyunk, and the Northern-Liberties: passed 20th February, 1768; recorded A. vol. V. page 227; expired.

574. An act for appropriating a sum of money for building the middle house, on the west side of the barracks, in the Northern-Liberties of the city of Philadelphia: passed 20th Feb. 1768; recorded A. vol. V. page 228; obsolete.

1769.

579. An act to enable the managers of the contributions for the relief and employment of the poor, in the city of Philadelphia, to raise the sum of fourteen thousand pounds, in bills of credit, towards discharging their debts, and to provide a fund for redeeming and sinking the said bills: passed 18th February, 1769; recorded A. vol. V. page 298; obsolete.

580. An act for raising the sum of sixteen thousand pounds for the support of the government of this province, and payment of the public debts, and other purposes therein mentioned: passed 18th February, 1769; recorded A. vol. V. page 305; obsolete.

A. D.

- 1769, CHAPTER 581. An act for raising, by way of lottery, the sum of one thousand six hundred and eighty-seven pounds ten shillings, to be applied to the payment of the arrears of debt due for the erecting and finishing the German reformed church and the German Lutheran church in York-town, and for the payment of the arrears of debt due for the erecting and finishing the German Lutheran churches at Heidelberg and Lebanon, both of Lancaster county; passed 18th February, 1769; recorded A. vol. V. page 290; obsolete.
582. An act for the sale of a church in the city of Philadelphia, to pay the debts now due for building the same, and distributing the residue of the purchase monies, arising from such sale, among the several persons who have been obliged to advance monies on account of the said church: passed 18th February, 1769; recorded A. vol. V. page 314; obsolete.
583. An act for raising by way of lottery, the sum of three thousand and ninety-nine pounds, twelve shillings, for the use of the first and third Presbyterian churches, and of the second Presbyterian church in the city of Philadelphia, and of the German reformed church in the township of Worcester: passed 18th February, 1769; recorded A. vol. V. page 283.
586. An act for ascertaining the securities to be given by the provincial treasurer, for the time being, for the faithful performance of his trust: passed 18th February, 1769; recorded A. vol. V. page 322; repealed.
587. An act to prevent persons from settling on the lands within the boundaries of this province, not purchased of the Indians: passed 18th February, 1769; recorded A. vol. V. page 322; obsolete.
589. An act to dissolve the marriage of Curtis Grubb, of the county of Lancaster, iron-master, with Ann his wife, late Ann Few, and to enable him to marry again: passed 18th February, 1769; recorded A. vol. V. page 312; private act; obsolete.
590. An act for the relief of James Green, Benjamin Davis, and Paul Riffet, languishing prisoners in the gaol of Philadelphia, with respect to the imprisonment of their persons: passed 18th February, 1769; recorded A. vol. V. page 312; private act; obsolete.
591. An act for a new regulation of the allotments of banks, dams, sluices and flood-gates, belonging to the Tinicum company, owners and possessors of drained meadow land in the township of Ridley, in the county of Chester: passed 18th February, 1769; recorded A. vol. V. page 308; private act.
592. An act to enable the commissioners therein after named, to settle the accounts of the managers, and to sue for and recover of them, their executors or administrators, such sums of money as are now due and unpaid on account of the lottery, set up and drawn, for erecting a new school-house for the High Dutch reformed congregation, and for enabling the vestry and wardens of St. James's church in the borough of Lancaster, to complete the work by them begun; and also to enable the managers to sue for and recover money due to them for the sale of tickets in the said lottery: passed 18th February, 1769; recorded A. vol. V. page 317.
593. A supplement to an act, entitled an act for erecting part of the counties of Philadelphia, Chester and Lancaster, into a separate county: passed 18th February, 1769; recorded A. vol. V. page 310; (obsolete.)



A. D.

1769.

CHAPTER 595. An act for explaining and amending an act, entitled an act for granting the sum of sixty thousand pounds to the king's use, and for striking fifty-five thousand pounds thereof in bills of credit, and to provide a fund for sinking the same: passed 27th May, 1769; recorded A. vol. V. page 327; obsolete.

596. An act to continue an act, entitled an act to amend the act, entitled an act for the better employment, relief and support of the poor, within the city of Philadelphia, the district of Southwark, the townships of Moyamensing and Passyunk, and the Northern-Liberties: passed 27th May, 1769; recorded A. vol. V. page 227; repealed 29th March, 1803.

597. An act to continue an act, entitled an act for appointing wardens for the port of Philadelphia, and for the better regulating pilots plying in the river and bay of Delaware, and price of pilotage to and from the said port: passed 27th May, 1769; recorded A. vol. V. page 329; obsolete.

598. An act for the relief of John Relfe, and Abraham Howell, prisoners in the gaol of Philadelphia, with respect to the imprisonment of their persons: passed 30th September, 1769; recorded A. vol. V. page 330; private act; obsolete.

599. An act for the support of the government of this province, and payment of the public debts: passed 30th September, 1769; recorded A. vol. V. page 336; obsolete.

600. An act to continue the act, entitled an act to enable the commissioners, herein after named, to settle the accounts of the managers, and to sue for and recover from several persons such sums of money, as are now due and unpaid on account of the lottery set up and drawn for erecting a house of worship at the town of Carlisle, in the county of Cumberland, for the use of the first Presbyterian congregation, under the pastoral care of John Steel: passed 30th September, 1769; recorded A. vol. V. page 335; obsolete.

601. An act for the relief of John Galbreath, a languishing prisoner in the gaol of Chester, with respect to the imprisonment of his person: passed 30th September, 1769; recorded A. vol. V. page 333; private act; obsolete.

1770.

607. An act for the sale of goods distrained for rent, and to secure such goods to the persons distraining the same, for the better security of rents, and to prevent frauds and abuses committed by tenants: passed 24th February, 1770; recorded A. vol. V. page 350; repealed; supplied.

608. An act for appointing commissioners to meet with commissioners, who are or may be appointed by the legislatures of the neighbouring colonies, to form and agree on a general plan for the regulation of the Indian trade: passed 24th February, 1770; recorded A. vol. V. page 337.

609. An act for incorporating the society formed for the relief of poor, aged and infirm masters of ships, their widows and children: passed 24th February, 1770; recorded A. vol. V. page 346; repealed 4th March, 1780, chap. 875.

611. An act for the relief of the languishing prisoners in the gaols of the several counties within this province, with respect to the imprisonment of their persons: passed 24th February, 1770; recorded A. vol. V. page 388; obsolete.

612. An act for punishing wicked and evil disposed persons going armed in disguise, and doing injuries and violences to the persons and properties of his majesty's subjects within this province, and for the more speedy bringing the offenders to justice: passed 24th February, 1770; recorded A. vol. V. page 354; expired.

A. D.

1770.

**CHAPTER 613.** An act for the further continuance of the act, entitled an act for appointing wardens for the port of Philadelphia, and for the better regulating pilots plying in the river and bay of Delaware, and the price of pilotage to and from the said port: passed 16th May, 1770; recorded A. vol. V. page 359; expired.

614. An act to continue an act, entitled an act for the opening and better amending, and keeping in repair, the public roads and highways within this province: passed 29th September, 1770; recorded A. vol. V. page 360; expired.

615. An act for regulating waggoners, carters, draymen and porters, within the city of Philadelphia, and for other purposes therein mentioned: passed 29th September, 1770; recorded A. vol. V. page 364; expired.

617. An act for the support of the government of this province, and payment of the public debts: passed 29th September, 1770; recorded A. vol. V. page 359.

1771.

618. An act for preventing tumults and riotous assemblies, and for the more speedy and effectual punishing the rioters: passed 9th February, 1771; recorded A. vol. V. page 435.

619. A supplement to the act, entitled an act for erecting part of the counties of Philadelphia, Chester and Lancaster, into a separate county: passed 9th March, 1771; recorded A. vol. V. page 422; supplied.

622. An act for the immediate raising of money, heretofore granted for the defence of the city of Philadelphia: passed 9th March, 1771; recorded A. vol. V. page 405; obsolete.

630. An act for the better securing and punishing certain offenders therein mentioned: passed 9th March, 1771; recorded A. vol. V. page 423; obsolete.

631. An act for appointing commissioners for opening and maintaining parts of two roads therein mentioned: passed 9th March, 1771; recorded A. vol. V. page 430; obsolete.

632. An act appointing wardens for the port of Philadelphia, and for the better regulating pilots plying in the river and bay of Delaware, and the price of pilotage to and from the said port: passed 29th March, 1771; recorded A. vol. V. page 394; repealed.

633. An act for the relief of George Hawkins, Conrad Kehmle, and Jonathan Hobby, languishing prisoners in the gaol of Philadelphia, with respect to the imprisonment of their persons: passed 9th March, 1771; recorded A. vol. V. page 424: private act.

634. An act for building a bridge over Skippack creek, in the county of Philadelphia: passed 9th March, 1771; recorded A. vol. V. page 431.

637. An act to enable Peter Mierken, sugar refiner, to hold lands, and to invest him with the privileges of a natural born subject of this province: passed 9th March, 1771; recorded A. vol. V. page 427.

639. An act for preventing tumults and riotous assemblies, and for the more speedy and effectual punishing the rioters: passed 19th October, 1771; recorded A. vol. V. page 444; expired.

640. An act for the support of the light-house, erected at the mouth of the bay of Delaware, and the buoys placed in the said bay, and the river Delaware, and for the repayment of the monies borrowed for erecting the said light-house, and placing the said buoys: passed 19th October, 1771; recorded A. vol. V. page 440; repealed.

1772.

641. An act to regulate the assize of bread, and for other purposes therein mentioned: passed 21st March, 1772; recorded A. vol. V. page 494; repealed.



A. D.  
1772.

- CHAPTER 643. An act for the relief of Richard Stevens, with respect to the imprisonment of his person : passed 21st March, 1772 ; recorded A. vol. V. page 510 ; private act.
646. An act for the relief of William Faries, John Gilliard, Charles Hicks, and John Reynolds, languishing prisoners in the gaol of Philadelphia ; and William Bennet, and Felix M'Cowan, languishing prisoners in the gaol of York county, with respect to the imprisonment of their persons : passed 21st March, 1772 ; recorded A. vol. V. page 492 ; private act.
647. An act for raising a fund to pay the damages done by dogs, within the city and county of Philadelphia, and the county of Bucks : passed 21st March, 1772 ; recorded A. vol. V. page 484 ; expired.
648. An act for regulating chimney sweepers within the city of Philadelphia, the district of Southwark, and the township of the Northern-Liberties : passed 21st March, 1772 ; recorded A. vol. V. page 455 ; repealed.
649. An act to enable the commissioners therein named to settle the accounts of the managers of a lottery set up and drawn, for repairing the meeting-house, and building or repairing the house for the residence of the minister of the Presbyterian congregation of Newtown, in the county of Bucks, and to sue for and recover such sums of money, as remain due and unpaid on account of the said lottery : passed 21st March, 1772 ; recorded A. vol. V. page 505 ; private act.
650. An act for the safe keeping and preserving the records and other public papers of the county of Bucks : passed 21st March, 1772 ; recorded A. vol. V. page 525.
651. An act for the recovery of divers sums of money from the persons therein named : passed 21st March, 1772 ; recorded A. vol. V. page 497 ; private act.
653. An act for opening, and better amending and keeping in repair the public roads and highways within this province : passed 21st March, 1772 ; recorded A. vol. V. page 447.
656. An act for the support of the government of this province, making the excise on wine, rum, brandy and other spirits, more equal, and preventing frauds in the collecting and paying the said excise : passed 21st March, 1772 ; recorded A. vol. V. page 463 ; repealed.
657. An act to prevent frauds and abuses in the manufacturing of leather ; passed 21st March, 1772 ; recorded A. vol. V. page 479 ; repealed.
659. An act for vesting a certain tract of four hundred and fifty acres of land, situate in Frederick township, in the county of Philadelphia, commonly called the Perkioning copper mine tract, in trustees, to be sold, and for other purposes therein mentioned : passed 21st March, 1772 ; recorded A. vol. V. page 516 ; private act.
661. An act for granting to his majesty the sum of four thousand pounds, for the purposes therein mentioned : passed 21st March, 1772 ; recorded A. vol. V. page 509 ; obsolete.
663. An act to dissolve the marriage of George Kehmle, of the city of Philadelphia, barber, with Elizabeth his wife, late Elizabeth Miller, and to enable him to marry again : passed 21st March, 1772 ; recorded A. vol. V. page 454 ; repealed.
664. An act for confirming the estates of John Pawling, Joseph Pawling, Abraham Sahler, Peter Reimer, Bernard Kepler, and Andrew Heizer, in and to certain lands in the county of Philadelphia : passed 21st March, 1772 ; recorded A. vol. V. page 500 ; private act.
666. An act for confirming the estate of Samuel Phipps in and to certain lands in the township of Goshen, in the county of Chester : passed 21st March, 1772 ; recorded A. vol. V. page 523 ; private act.

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1772. CHAPTER 667. An act to enable William Hembell, of the city of Philadelphia, taylor, to hold lands, and to invest him with the privileges of a natural born subject of this province: passed 21st March, 1772; recorded A. vol. V. page 526; repealed.
668. An act for confirming the estate of Adam Simon Kuhn in and to a certain lot of ground, with the buildings thereon, in the borough of Lancaster, one of the title deeds whereof is lost: passed 21st March, 1772; recorded A. vol. V. page 527; private act; obsolete.
670. An act for the support of the government of this province, and payment of the public debts: passed 19th September, 1772; recorded A. vol. V. page 529; obsolete.
1773. 671. An act appointing wardens for the port of Philadelphia, and for other purposes therein mentioned: passed 26th February, 1773; recorded A. vol. V. page 543; repealed.
675. An act to amend the act, entitled an act to regulate the assize of bread, and for other purposes therein mentioned; passed 26th February, 1773; recorded A. vol. VI. page 11; repealed.
676. An act for the relief of William Ritchie, a languishing prisoner in the gaol of Philadelphia, and John Milliron, a languishing prisoner in the gaol of Lancaster county, with respect to the imprisonment of their persons: passed 26th February, 1773; recorded A. vol. VI. page 4; private act; obsolete.
677. An act to repeal the act, entitled an act to prevent frauds and abuses in the manufacturing of leather: passed 26th February, 1773; recorded A. vol. VI. page 11; obsolete.
679. An act for vesting a certain tract of land in the township of Middleton, and county of Cumberland, and a lot in the town of Carlisle, in the said county, in trustees, to be sold for the purpose therein mentioned: passed 26th February, 1773; recorded A. vol. V. page 555; private act; obsolete.
681. An act for making perpetual the act, entitled an act for laying a duty on negroes and mulatto slaves, imported into this province, and laying an additional duty on the said slaves: passed 26th February, 1773; recorded A. vol. VI. page 10; repealed.
683. An act for making perpetual an act, entitled an act directing the choice of inspectors, and for holding the general elections in this province: passed 26th February, 1773; recorded A. vol. VI. page 7; repealed.
684. An act to prevent counterfeiting the paper money of other colonies: passed 28th September, 1773; recorded A. vol. VI. page 13; expired.
685. An act for the relief of Samuel Sweet, a languishing prisoner in the gaol of Philadelphia, and Thomas Bamford, a languishing prisoner in the gaol of Lancaster county, with respect to the imprisonment of their persons: passed 28th September, 1773; recorded A. vol. VI. page 12; private act; obsolete.
686. An act for the support of the government of this province, and payment of the public debts: passed 28th September, 1773; recorded A. vol. VI. page 14; obsolete.
1774. 688. An act for preventing tumults and riotous assemblies, and for the more speedy and effectual punishing the rioters: passed 22d January, 1774; recorded A. vol. VI. page 31; expired.
689. An act to prevent infectious diseases being brought into this province: passed 22d January, 1774; recorded A. vol. VI. page 33; repealed.



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690. An act to amend the act, entitled an act for granting to his majesty the sum of fifty-five thousand pounds, and for striking the same in bills of credit, in the manner herein after directed, and for providing a fund for sinking the said bills of credit, by a tax on all estates, real and personal, and taxables, within this province: passed 22d January, 1774; recorded A. vol. VI. page 38; obsolete.
693. An act for repealing a part of an act, entitled an act for regulating pedlars, vendues, &c. passed 22d January, 1774; recorded A. vol. VI. page 42; repealed.
694. An act to increase the allowance to members of assembly; for their attendance on the public service: passed 22d January, 1774; recorded A. vol. VI. page 41; repealed and supplied.
695. An act for lending the sum of eight hundred pounds to the several and respective counties of Bedford, Northumberland and Westmoreland, for building a court-house and prison in each of the said counties; passed 23d July, 1774; recorded A. vol. VI. page 45; obsolete.
696. An act to continue an act, entitled an act to amend the act, entitled an act to prevent the exportation of bread and flour not merchantable: passed 23d July, 1774; recorded A. vol. VI. page 46; repealed.
697. An act for the support of the government of this province, and payment of the public debts: passed 29th September, 1774; recorded A. vol. VI. page 46; obsolete.
698. A supplement to the act, entitled an act for emitting the sum of one hundred and fifty thousand pounds in bills of credit, on loan, and providing a fund for the payment of public debts: passed 14th December, 1774; recorded A. vol. VI. page 48; obsolete.
699. A supplement to the act, entitled an act for erecting the north-west part of Bucks into a separate county: passed 14th December, 1774; recorded A. vol. VI. page 55; obsolete.
700. An act for the relief of Henry William Stiegel, a languishing prisoner in the gaol of Philadelphia county, with respect to the imprisonment of his person: passed 24th December, 1774; recorded A. vol. VI. page 50; private act; obsolete.
702. An act for the relief of John Burrows, a languishing prisoner in the gaol of Philadelphia county, and William Waters, a languishing prisoner in the gaol of Bucks county, with respect to the imprisonment of their persons: passed 24th December, 1774; recorded A. vol. VI. page 49; private act; obsolete.
- 1775.
705. A supplement to the act, entitled an act for erecting a new gaol, work-house and house of correction, in the city of Philadelphia: passed 18th March, 1775; recorded A. vol. VI. page 62; obsolete.
706. A supplement to the act, entitled an act appointing wardens for the port of Philadelphia, and for other purposes therein mentioned: passed 18th March, 1775; recorded A. vol. VI. page 65; repealed.
708. An act for the relief of William Goddard, and Septimus Levering, languishing prisoners in the gaol of Philadelphia county, with respect to the imprisonment of their persons: passed 18th March, 1775; recorded A. vol. VI. page 61; private act; obsolete.

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CHAPTER 709. An act to enable the trustees therein mentioned to sell and dispose of a certain tract of land, and to apply the monies arising therefrom to the use of the Low Dutch reformed congregation, or religious society of christians called Dutch Presbyterians: passed 18th March, 1775; recorded A. vol. VI. page 66; private act; obsolete.

710. An act to amend an act entitled a supplement to the act, entitled an act appointing wardens for the port of Philadelphia, and for other puposes therein mentioned: passed 29th June, 1775; recorded A. vol. VI. page 67; repealed.

711. An act for confirming the estate of the heirs and representatives of John Taylor, late of the county of Chester, practitioner in physic, deceased, in a certain tract of land in the township of Bradford, in the said county: passed 29th June, 1775; recorded A. vol. VI. page 70; private act; obsolete.

712. An act for confirming the estate of Daniel Andrew in and to certain lands in Amity township, in the county of Berks: passed 29th June, 1775; recorded A. vol. VI. page 68; private act; obsolete.

713. An act for the support of the government of this province, and payment of the public debts: passed 30th September, 1775; recorded A. vol. VI. page 72; obsolete.

714. An act for the relief of Richard Taylor, Jacob Muck, George Jacob Hausman, Richard Ray, and Francis Owens, languishing prisoners in the gaol of Philadelphia county, and James Mackay, a languishing prisoner in the gaol of Northumberland county, with respect to the imprisonment of their persons: passed 23d November, 1775; recorded A. vol. VI. page 76; private act; obsolete.

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715. An act to increase the number of representatives in assembly for the city of Philadelphia, and in the several counties therein named: passed 23d March, 1776; recorded A. vol. VI. page 78; obsolete.

716. An act to enable the keepers of records in the counties of Philadelphia and Chester to remove them to more safe and convenient places: passed 23d March, 1776; recorded A. vol. VI. page 77; expired.

718. An act to continue an act, entitled an act to regulate the fishery in the river Schuylkill, and to make further provisions therein: passed 6th April, 1776; recorded A. vol. VI. page 91; expired.

719. An act to make perpetual an act, passed in the eleventh year of the reign of his present majesty king George the third, entitled an act for the relief of the poor: passed 6th April, 1776; recorded A. vol. VI. page 92; supplied.

720. An act for the relief of William Judd, John Onions, Michael Jordon, and William Sanders, prisoners for debt in the gaol of Philadelphia county, with respect to the imprisonment of their persons: passed 6th April, 1776; recorded A. vol. VI. page 86; private act; obsolete.

721. An act for confirming the estate of Andrew Hershey, in and to certain lands in the township of Donegal, in the county of Lancaster: passed 6th April, 1776; recorded A. vol. VI. page 88; private act; obsolete.

722. An act to suspend the carrying into execution the orders of the governor and council for opening a certain road in this province: passed 6th April, 1776; recorded A. vol. VI. page 84; obsolete.

723. An act for vesting a certain tract of land, situate in Middletown township, in the county of Bucks, in trustees, to be sold, and for other purposes therein mentioned: passed 6th April, 1776; recorded A. vol. VI. page 80; private act; obsolete.



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724. An act for the relief of Alexander Stewart, a prisoner for debt in the gaol of Philadelphia county, with respect to the imprisonment of his person: passed 6th April, 1776; recorded A. vol. VI. page 85; private act; obsolete.
725. An act to enable a smaller number of the members of assembly than a quorum to collect the absent members, and issue writs for filling vacancies occasioned by neglect or refusal: passed 21st January, 1777; recorded in law book vol. I. page 69; obsolete.
727. An act for making the continental bills of credit, and the bills of credit emitted by resolves of the late assemblies, legal tender, and for other purposes therein mentioned: passed 29th January, 1777; recorded in law book vol. I. page 72; repealed.
728. An act directing the mode and times of electing justices of the peace for the city of Philadelphia, and the several and respective counties in this commonwealth, and for other purposes therein mentioned: passed 5th February, 1777; recorded in law book vol. I. page 77; repealed.
730. An act prescribing the mode and manner of qualifying the commissioners and assessors: passed 12th February, 1777; recorded in law book vol. I. page 81; obsolete.
731. An act directing the mode of collecting the fines imposed on persons who did not meet and exercise, in order to learn the art military, according to the resolves of the late assembly of Pennsylvania: passed 14th February, 1777; recorded in law book vol. I. page 82; expired.
732. An act authorizing the collectors of the excise due, and to become due, on spirituous liquors, to collect the same, and directing the mode of obtaining tavern and other licences, and for other purposes therein mentioned: passed 18th February, 1777; recorded in law book vol. I. page 85; repealed.
733. An act to discourage desertion, and to punish all such persons as shall harbour or conceal deserters: passed 20th February, 1777; recorded in law book vol. I. page 88; expired.
734. An act to make effectual bonds heretofore given to the governors of Pennsylvania, by the several officers of government, for the faithful discharge of their respective offices: passed 11th March, 1777; recorded in law book vol. I. page 90; obsolete.
735. An act to empower the justices of the peace for the city of Philadelphia to do and perform certain matters and things formerly directed to be done and performed by the mayor, recorder, and aldermen of the said city: passed 14th March, 1777; recorded in law book vol. I. page 91; repealed.
738. A supplement to an act directing the mode and times of electing Justices of the Peace, for the city of Philadelphia and the several counties in this commonwealth, and for other purposes therein mentioned: passed 15th March, 1777; recorded in law book vol. I. page 95; repealed.
739. An act to regulate the militia of the commonwealth of Pennsylvania: passed 17th March 1777; recorded in law book vol. I. page 97; repealed.
740. An act to encrease the wages of assemblymen: passed 19th March, 1777; recorded in law book vol. I. page 110; supplied.

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- CHAPTER 741. An act for emitting the sum of two hundred thousand pounds in bills of credit, for the defence of this state, and providing a fund for sinking the same by a tax on all estates real and personal, and on all taxables, within the same: passed 20th March, 1777; recorded in law book vol. I. page 111; obsolete.
742. An act for punishing the counterfeiting the continental loan-office tickets and lottery tickets: passed 20th March 1777; recorded in law book, vol. I. page 115; obsolete.
743. An act authorizing the president and council to appoint judges to hold city courts and for other purposes therein mentioned: passed 21st March, 1777; recorded in law book vol. I. page 117; repealed.
744. A supplement to the act, entitled an act for making the continental bills of credit, and the bills of credit emitted by resolves of the late assemblies, legal tender, and for other purposes therein mentioned: passed 13th June, 1777; recorded in law book vol. I. page 119; repealed.
745. An act obliging the male white inhabitants of this state to give assurances of allegiance to the same, and for other purposes therein mentioned: passed 13th June, 1777; recorded in law book vol. I. page 120; repealed.
746. A supplement to the act, entitled an act for amending the several acts for electing members of assembly: passed 14th June, 1777; recorded in law book vol. I. page 122; repealed.
747. A supplement to the act, entitled an act directing the mode of collecting the fines imposed on persons who did not meet and exercise, in order to learn the art military, according to the resolves of the late assembly of Pennsylvania: passed 18th June, 1777; recorded in law book vol. I. page 128; obsolete.
749. A supplement to the act, entitled an act to regulate the militia of the commonwealth of Pennsylvania: passed 19th June, 1777; recorded in law book vol. I. page 133; repealed.
750. An act to prohibit the sale of goods, wares and merchandizes, by public vendue, and to regulate pedlars and hawkers in this state: passed 19th June, 1777; recorded in law book vol. I. page 136; repealed 26th November, 1779.
751. An act to empower the supreme executive council of this commonwealth to provide for the security thereof, in special cases, where no provision is already made by law: passed 16th September, 1777; recorded in law book vol. I. page 137; expired.
752. An act making provision for the relief of officers, soldiers, marines and seamen, who in the course of the present war, being in the service of the United States of America, have been or shall be maimed, or otherwise disabled from getting their livelihood, and shall be resident in, or belonging to, the state of Pennsylvania: passed 18th September, 1777; recorded in law book vol. I. page 139; repealed.
753. A supplement to an act, entitled an act to enable a smaller number of the members of assembly than a quorum to collect the absent members, and issue writs for filling vacancies, occasioned by neglect or refusal: passed 11th October, 1777; recorded in law book vol. I. page 142; repealed.
754. A supplement to the act, entitled an act obliging the male white inhabitants of this state to give assurances of allegiance to the same and for other purposes therein mentioned: passed 12th October, 1777; recorded in law book vol. I. page 143; repealed.



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CHAPTER 755. An act for constituting a council of safety, and vesting the same with the powers therein mentioned: passed 13th October, 1777; recorded in law book vol. I. page 144; expired.

756. A supplement to the act, entitled an act for emitting the sum of two hundred thousand pounds, in bills of credit, for the defence of this state, and providing a fund for sinking the same by a tax on all estates, real and personal, and on all taxables, within the same: passed 13th October, 1777; recorded in law book vol. I. page 145; expired.

757. A further supplement to the act, entitled an act for emitting the sum of two hundred thousand pounds, in bills of credit, for the defence of this state, and providing a fund for sinking the same by a tax on all estates, real and personal, and on all taxables, within the same: passed 10th December, 1777; recorded in law book vol. I. page 147; obsolete.

758. An act to empower the justices of Philadelphia and Chester counties to hold courts at other places than usual: passed 20th December, 1777; recorded in law book vol. I. page 148; repealed.

759. An act to empower certain commissioners, appointed by congress, to take vigorous measures for the defence of the western frontiers of this state, and for other purposes therein mentioned: passed 20th December, 1777; recorded in law book vol. I. page 149; expired.

761. A supplement to several acts of general assembly, directing the mode of appointing and fining the several officers herein mentioned: passed 26th December, 1777; recorded in law book vol. I. page 152; expired.

762. An act for making more equal the burthen of the public defence; and for filling the quota of troops to be raised in this state: passed 26th December, 1777; recorded in law book vol. I. page 153; obsolete.

763. An act to regulate the wages of the representatives of the freemen in assembly: passed 27th December, 1777; recorded in law book vol. I. page 154; repealed.

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764. An act to continue in force an act of general assembly of the commonwealth of Pennsylvania, entitled an act to empower the supreme executive council of this commonwealth to provide for the security thereof in special cases, where no provision is already made by law: passed 2d January, 1778; recorded in law book vol. I. page 155; expired.

767. An act for suspending the powers of the trustees of the college and academy of Philadelphia for a limited time: passed 2d January, 1778; recorded in law book vol. I. page 157; repealed.

768. An act to prevent forestalling and regrating, and to encourage fair dealing: passed 2d January, 1778; recorded in law book vol. I. page 158; expired.

769. An act for the regulation of waggons, carriages and pack-horses, for the public service; passed 2d January, 1778; recorded in law book vol. I. page 160; expired.

770. A further supplement to the act, entitled an act to regulate the militia of the commonwealth of Pennsylvania: passed 30th December, 1778; recorded in law book vol. I. page 162; repealed.

771. An act for the better supply of the armies of the United States of America: passed 2d January, 1778; recorded in law book vol. I. page 165; repealed.

772. A supplement to the act, entitled an act for the better supply of the armies of the United States: passed 27th February, 1778; recorded in law book vol. I. page 170; repealed.

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774. An act for making compensation to those, whose servants and apprentices have been enlisted: passed 12th March, 1778; recorded in law book vol. I. page 179; obsolete.
775. A supplement to the act, entitled an act to discourage desertion, and to punish all such persons as shall harbour or conceal deserters: passed 12th March, 1778; recorded in law book vol. I. page 180; obsolete.
776. A supplement to the act, entitled an act for the regulating of waggons, carriages and pack-horses, for the public service: passed 12th March, 1778; recorded in law book vol. I. page 180; expired.
777. An act for the better securing and punishing persons guilty of the crimes and offences therein mentioned: passed 13th March, 1778; recorded in law book vol. I. page 181; repealed.
778. An act for the more speedy and effectual recovery of debts due to the United States of America: passed 23d March, 1778; recorded in law book, vol. I. page 182; obsolete.
779. A further supplement to the act, entitled an act for amending the several acts for electing members of assembly: passed 23d March, 1778; recorded in law book vol. I. page 183; repealed.
781. An act to revive and put in force the act of general assembly of the province of Pennsylvania, entitled an act for the relief of the poor, and for other purposes therein mentioned: passed 24th March, 1778; recorded in law book vol. I. page 185; supplied.
782. A supplement to the act, entitled an act for the regulating and establishing of fees: passed 26th March, 1778; recorded in law book vol. I. page 186; repealed.
783. An act for raising the sum of six hundred and twenty thousand dollars, for the use of the United States of America: passed 27th March, 1778; recorded in law book vol. I. page 187; obsolete.
784. An act for regulating the prices of the several articles herein mentioned for a limited time; passed 1st April, 1778; recorded in law book vol. I. page 190; repealed.
785. An act for the further security of the government: passed 1st April, 1778; recorded in law book vol. I. page 191; repealed.
786. A supplement to the act, entitled an act to prevent forestalling and regrating, and to encourage fair dealing: passed 1st April, 1778; recorded in law book vol. I. page 195; repealed.
787. An act to empower the justices of the county of Bucks to hold courts at other places than usual, and for the removal and safe custody of the records and other public papers of the said county: passed 1st April, 1778; recorded in law book vol. I. page 196; repealed.
788. An act for suspending, for a limited time, the act, entitled an act for regulating the prices of the several articles herein after mentioned, for a limited time: passed 25th May, 1778; recorded in law book vol. I. page 197; expired.
789. A supplement to the act, entitled an act for calling in the bills of credit issued by the legislative authority of Pennsylvania, under the sanction and authority of the crown of Great-Britain, and for other purposes herein mentioned: passed 25th May, 1778; recorded in law book vol. I. page 198; obsolete.



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- CHAPTER 790. An act to repeal three several acts of general assembly of this commonwealth, to wit, the act, entitled an act to empower the justices of Philadelphia and Chester counties to hold courts at other places than usual ; one other act, entitled an act for the better securing and punishing persons guilty of crimes therein mentioned ; and the act, entitled an act to empower the justices of the county of Bucks to hold courts at other places than usual, and for the removal and safe custody of the records and other public papers of the said county : passed 19th August, 1778 ; recorded in law book vol. I. page 200 ; obsolete.
791. An act to indemnify William Dewees, Esquire, the late sheriff, and James Claypoole, Esquire, the present sheriff, of the city and county of Philadelphia, for removing the prisoners from the new gaol, and imprisoning them and others in the old gaol, in the city of Philadelphia : passed 27th August, 1778 ; recorded in law book vol. I. page 200 ; obsolete.
794. A further supplement to the act, entitled an act directing the mode and time of electing justices of the peace for the city of Philadelphia, and the several counties in this commonwealth, and for other purposes herein mentioned : passed 31st August, 1778 ; recorded in law book vol. I. page 206 ; repealed.
795. An act for settling the accounts of the late committee and council of safety : passed 2d September, 1778 ; recorded in law book vol. I. page 207 ; repealed.
796. An act to enable the supreme executive council to allow further time to John Abraham De Normandie, of the county of Bucks, practitioner in physic, for the sale of his estate, and to retire out of the state, than is allowed in an act of general assembly, entitled an act for the further security of the government : passed 2d September, 1778 ; recorded in law book vol. I. page 208 ; private act ; expired.
798. An act to prohibit the exportation of provisions from the state of Pennsylvania, for a limited time : passed 7th September, 1778 ; recorded in law book vol. I. page 209 ; expired.
799. An act for the recovery of the duties on Negroes and Mulatto-slaves, which on the fourth day of July, one thousand seven hundred and seventy-six, were due to this state, and have since accrued, and for appointing a collector of the said duties : passed 7th September, 1778 ; recorded in law book vol. I. page 210 ; repealed.
800. An act for establishing a court of admiralty : passed 9th September, 1778 ; recorded in law book I. page 212 ; repealed.
801. An act to repeal the act, entitled an act for regulating the several articles herein mentioned, for a limited time, and also so much of the act, entitled an act for the better supply of the army of the United States of America, and the supplement thereto, as is herein after mentioned : passed 9th September, 1778 ; recorded in law book vol. I. page 216 ; obsolete.
802. A supplement to the act, entitled an act for the further security of the government : passed 10th September, 1778 ; recorded in law book vol. I. page 216 ; repealed.
803. A further supplement to the act, entitled an act for the regulation of waggons, carriages and pack-horses, for public service : passed 10th September, 1778 ; recorded in law book vol. I. page 218 ; repealed.
804. An act for regulating navigation and trade in this state : passed 10th September, 1778 ; recorded in law book vol. I. page 219 ; expired.

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- CHAPTER 805. A further supplement to the act, entitled an act, to prevent forestalling and regrating, and to encourage fair dealing: passed 10th September, 1778; recorded in law book vol. I. page 221; repealed.
806. An act to prohibit the exportation of provisions from the state of Pennsylvania, for a limited time: passed 17th November, 1778; recorded in law book vol. I. page 222; expired.
807. An act for the repeal of so much of the act of assembly, entitled an act for the attainder of divers traitors, if they render not themselves by a certain day, and for vesting their estates in this commonwealth, and for more effectually discovering the same, and for ascertaining and satisfying the lawful claims thereupon, as relates to Reynold Keen, in the said act named: passed 26th November, 1778; recorded in law book vol. I. page 223.
808. An act to prohibit, for a limited time, the making of whiskey and other spirits from wheat, rye, or any other sort of grain, or from any meal or flour: passed 27th November, 1778; recorded in law book vol. I. page 224; expired.
809. An act for the relief of Albertson Walton, otherwise called Albinson Walton: passed 27th November, 1778; recorded in law book vol. I. page 226; private act.
810. An act to continue as well an act of general Assembly of this state, entitled an act for the regulation of waggons, carriages and pack-horses, for the public service, as the supplement and the further supplement to the said act: passed 30th November, 1778; recorded in law book vol. I. page 227; expired.
811. A further supplement to the act, entitled an act for the further security of the government: passed 5th December, 1778; recorded in law book vol. I. page 228; repealed.
812. An act to revive and continue an act, entitled a supplement to the act, entitled an act for emitting the sum of two hundred thousand pounds, in bills of credit, for the defence of this state, and providing a fund for sinking the same by a tax on all estates, real and personal, and on all taxables, within the same; and to explain an act for raising the sum of six hundred and twenty thousand dollars, for the use of the United States of America, and for other purposes therein mentioned: passed 5th December, 1778; recorded in law book vol. I. page 232; obsolete.
813. A supplement to the act, entitled an act for settling the accounts of the late committee and council of safety: passed 5th December, 1778; recorded in law book vol. I. page 233; repealed.
- 1779.
814. An act to increase the fees on tavern licences, the fines on tippling-houses, and the rates of excise: passed 15th March, 1779; recorded in law book vol. I. page 234; repealed.
815. An act to empower the trustees for building a court-house and prison in and for the county of Bedford to sell a messuage and lot of ground in the town of Bedford, purchased by them to serve as a temporary prison, and to appropriate the monies arising by such sale: passed 15th March, 1779; recorded in law book vol. I. page 236; obsolete.
816. A supplement to the act, entitled an act to prohibit, for a limited time, the making of whiskey, and other spirits, from wheat, rye, or any other sort of grain, or from any meal or flour: passed 10th March, 1779; recorded in law book vol. I. page 237; expired.



A. D.  
1779.

- CHAPTER 817. An act to increase the fines and penalties on public officers for refusal or neglect of duty ; and also to augment the fees of the several officers herein after mentioned: passed 16th March, 1779 ; recorded in law book vol. I. page 239 ; expired.
818. An act for vesting the house and lots, therein described, in trustees, for the use of the president of the supreme executive council of the state for the time being : passed 18th March, 1779 ; recorded in law book vol. I. page 241 ; repealed.
819. A supplement to the act, entitled an act for emitting the sum of two hundred thousand pounds, in bills of credit, for the defence of this state, and providing a fund for sinking the same by a tax on all estates, real and personal, and on all taxables, within the same ; and also to the act, entitled an act for raising the sum of six hundred and twenty thousand dollars, for the use of the United States of America : passed 20th March, 1779 ; recorded in law book vol. I. page 243 ; obsolete.
820. An act to ascertain the number of taxable inhabitants within the city of Philadelphia, and within each of the counties of this commonwealth : passed 28th March, 1779 ; recorded in law book vol. I. page 244 ; expired.
822. An act for the suppression of vice and immorality : passed 30th March, 1779 ; recorded in law book vol. I. page 249 ; repealed.
824. A further supplement to the act, entitled an act for settling the accounts of the late committee and council of safety : passed 31st March, 1779 ; recorded in law book vol. I. page 258 ; repealed.
825. An act for repealing part of an act, entitled a further supplement to the act, entitled an act for the further security of government ; and for disarming persons who shall not have given attestations of allegiance and fidelity to this state, or some other of the United States : passed 2d April, 1779 ; recorded in law book vol. I. page 258 ; repealed.
827. An act to compel certain persons, entrusted with public money by or for the use of this commonwealth, to account for the expenditure of the same, and to pay such parts thereof as they shall be chargeable with into the state treasury : passed 2d April, 1779 ; recorded in law book vol. I. page 261 ; repealed.
828. An act for the better relief of the poor of the city of Philadelphia, the district of Southwark, and the townships of Moyamensing, Passyunk and the Northern Liberties, in the county of Philadelphia : passed 2d April, 1779 ; recorded in law book vol. I. page 267 ; repealed.
829. An act to raise the supplies for the year one thousand seven hundred and seventy-nine : passed 3d April, 1779 ; recorded in law book vol. I. page 268 ; obsolete.
830. An act for supplying the army of the United States, and for other purposes therein mentioned : passed 3d April, 1779 ; recorded in law book vol. I. page 275 ; expired.
831. An act to prevent the trespassing upon the uninclosed grounds lying in the townships of Passyunk, Moyamensing, Northern Liberties, and Germantown, in the county of Philadelphia : passed 5th April, 1779 ; recorded in law book vol. I. page 278 ; expired.
832. A further supplement to the act, entitled an act to regulate the militia of the commonwealth of Pennsylvania : passed 5th April, 1779 ; recorded in law book vol. I. page 279 ; repealed.

A. D.

1779. CHAPTER 833. An act to amend an act of general assembly of this state, entitled an act for the regulation of waggons, and the supplement and further supplement to the said act: passed 5th April, 1779; recorded in law book vol. I. page 280; expired.
834. An act for the regulation of the markets in the city of Philadelphia, and for other purposes therein mentioned: passed 5th April, 1779; recorded in law book vol. I. page 284; repealed.
835. A further supplement to an act, entitled an act for regulating and continuing the nightly watch, enlightening the streets, lanes and alleys of the city of Philadelphia, and for other purposes therein mentioned, and to an act which is a supplement thereto, passed in the year of our Lord one thousand seven hundred and seventy-six: passed 5th April, 1779; recorded in law book vol. I. page 284; expired.
836. An act to appoint a representation for the city of Philadelphia, and the several counties in this commonwealth, in proportion to the number of taxable inhabitants in each: passed 24th September, 1779; recorded in law book vol. I. page 286; supplied.
838. A supplement to an act, entitled an act for regulating, pitching, paving and cleansing the highways, streets, lanes and alleys; and for regulating, making and amending the water courses and common sewers within the inhabited and settled parts of the city of Philadelphia; for raising of money to defray the expenses thereof; and for other purposes therein mentioned: passed 30th September, 1779; recorded in law book vol. I. page 288; expired.
839. An act to continue an act, entitled an act for opening, and better amending and keeping in repair, the public roads and highways within this province: passed 30th September, 1779; recorded in law book vol. I. page 289; repealed and supplied.
840. A supplement to the act for raising of county rates and levies: passed 1st October, 1779; recorded in law book vol. I. page 290; repealed.
841. A further supplement to the test laws of this state: passed 1st October, 1779; recorded in law book vol. I. page 291; repealed.
842. A supplement to an act, entitled an act for the repeal of so much of the act of assembly, entitled an act for the attainer of divers traitors, if they render not themselves by a certain day, and for vesting their estates in this commonwealth, and for more effectually discovering the same, and for ascertaining and satisfying the lawful debts and claims thereupon, as relates to Reynold Keen, in the said act named: passed 6th October, 1779; recorded in law book vol. I. page 292; obsolete.
843. An act to vest the estates of Nathaniel Vernon, late of Chester county, Esquire, in his four sons: passed 6th October, 1779; recorded in law book vol. I. page 293; private act; obsolete.
844. A supplement to the act, entitled an act to prevent the exportation of bread and flour not merchantable, and to the act which is an amendment thereof: passed 6th October, 1779; recorded in law book vol. I. page 294; repealed.
845. An act to permit the making of whiskey and other spirits from rye, barley, or the malt made thereof, under certain restrictions, therein mentioned; and to prohibit the distilling any whiskey or other spirits from any other grain, meal, malt or flour: passed 8th October, 1779; recorded in law book vol. I. page 295; expired.



A. D.

1779.

- CHAPTER 846. An act to establish and confirm the estate of Thomas Beams in several lands and tenements in this state : passed 8th October, 1779 ; recorded in law book vol. I. page 297 ; private act ; obsolete.
847. An act to establish and confirm the estate of John Sommers, in several lands and tenements in this state : passed 8th October, 1779 ; recorded in law book vol. I. page 298 ; private act ; obsolete.
848. An act for the more effectually preventing engrossing and forestalling, for the encouragement of commerce and the fair trader, and for other purposes therein mentioned : passed 8th October, 1779 ; recorded in law book vol. I. page 298 ; repealed.
849. An act to enable the sheriff of the city and county of Philadelphia, for the time being, to confine prisoners in the old gaol in the said city : passed 8th October, 1779 ; recorded in law book vol. I. page 303 ; obsolete.
850. An act for dissolving the marriage of James Martin with Elizabeth his wife : passed 8th October, 1779 ; recorded in law book vol. I. page 304 ; private act ; obsolete.
851. A supplement to an act for the more easy and speedy recovery of small debts : passed 9th October, 1779 ; recorded in law book vol. I. page 305 ; expired.
853. An act for procuring an immediate supply of provisions for the purposes herein mentioned : passed 9th October, 1779 ; recorded in law book vol. I. page 305 ; expired.
854. An act to empower the supreme executive council and justices of the supreme court to apprehend suspected persons, and to increase the fines to which persons are liable to, for neglecting to perform their tour of militia duty : passed 10th October, 1779 ; recorded in law book vol. I. page 307 ; expired.
855. An act for raising the additional sum of five millions seven hundred thousand dollars, for the current year one thousand seven hundred and seventy-nine : passed 10th October, 1779 ; recorded in law book vol. I. page 308 ; obsolete.
856. An act for regulating chimney sweepers within the city of Philadelphia, the district of Southwark, and the township of the Northern-Liberties of the city of Philadelphia : passed 26th November, 1779 ; recorded in law book vol. I. page 311 ; expired.
857. An act for raising the sum of two millions five hundred thousand dollars monthly, during eight months in the year one thousand seven hundred and eighty, for the supply of the treasury of the United States of America, and the treasury of this state : passed 25th November, 1779 ; recorded in law book vol. I. page 313 ; expired.
858. An act more effectually to prevent counterfeiting the continental loan-office certificates, the continental loan-office bills of exchange, and the paper money of the United States of America, or any of them : passed 26th November, 1779 ; recorded in law book vol. I. page 314 ; repealed.
859. An act for the effectual suppression of public auctions and vendues ; and to prohibit male persons, capable of bearing arms, from being pedlars or hawkers : passed 26th November, 1779 ; recorded in law book vol. I. page 316 ; expired.

A. D.

1779.

CHAPTER 861. An act to repeal part of an act, entitled an act for making more equal the burthen of the public defence, and for filling the quota of troops to be raised in this state ; and to continue for a longer time the act, entitled an act to empower the supreme executive council and justices of the supreme court to apprehend suspected persons, and increase the fines to which persons are liable, for neglecting to perform their tour of militia duty : passed 27th November, 1779 ; recorded in law book vol. I. page 323 ; expired.

862. A supplement to an act, entitled an act for the relief of the poor : passed 27th November, 1779 ; recorded in law book vol. I. page 323 : repealed.

864. An act for the better support of certain officers of this state, and for ascertaining the specific fines and penalties which they may incur by neglect of duty : passed 27th November, 1779 ; recorded in law book vol. I. page 327 ; repealed.

1780.

865. An act for laying an embargo on the exportation of provisions from this state, by sea, for a limited time : passed 28th February, 1780 ; recorded in law book vol. I. page 328 ; expired.

866. An act for the preservation of buildings erected upon the lands of divers inhabitants of this commonwealth, for the use of the United States, and vesting such land, with the buildings, in the United States, during the present war, and to punish persons for waste or trespasses made or committed thereon, and for other purposes therein mentioned : passed 28th February, 1780 ; recorded in law book vol. I. page 329 ; expired.

868. An act for erecting an high court of errors and appeals : passed 28th February, 1780 ; recorded in law book vol. I. page 332 ; repealed.

871. An act to compel the settlement of the public accounts : passed 1st March, 1780 ; recorded in law book vol. I. page 342 ; repealed.

872. An act to alter and amend an act of assembly, entitled an act for the effectual suppression of public auctions and vendues, and to prohibit male persons capable of bearing arms from being hawkers and pedlars, so far as to allow the sale by public auction of goods damaged or shipwrecked : passed 2d March, 1780 ; recorded in law book vol. I. page 346 ; repealed.

876. An act for regulating and establishing admiralty jurisdiction : passed 8th March, 1780 ; recorded in law book vol. I. page 353 ; repealed.

880. An act for the relief of the suffering inhabitants of the counties of Northampton, Bedford, Northumberland and Westmoreland : passed 10th March, 1780 ; recorded in law book vol. I. page 361 ; expired.

881. An act to revive an act, entitled an act to prevent the trespassing upon the uninclosed grounds, lying in the townships of Passyunk, Moyamensing, Northern-Liberties and Germantown, in the county of Philadelphia, and to extend the said act to the adjoining township of Bristol, in the same county, and to prevent swine from running at large within the said townships, for a limited time : passed 13th March, 1780 ; recorded in law book vol. I. page 362 ; expired.

885. An act to prevent trespasses and waste from being committed upon the lands of absent persons, and upon vacant and unappropriated lands : passed 17th March, 1780 ; recorded in law book vol. I. page 366 ; expired.

887. An act to grant to Henry Guest an exclusive right, for the term of five years, of making oil and blubber from the materials of his own discovery : passed 17th March, 1780 ; recorded in law book vol. I. page 369 ; private act ; expired.



A. D.

1790:

- CHAPTER 888. An act for the effectual recovering and securing the fines, forfeitures and other monies, due or belonging to the commonwealth, for the use of the same: passed 18th March, 1780; recorded in law book vol. I. page 369; repealed.
889. An act directing the apportioning and assessing of county rates and levies; poor rates; the taxes to be laid for the opening, amending and repairing of roads and highways; the taxes to be laid for supporting the nightly watch, the lamps and pumps, and for pitching, paving and cleansing the streets, lanes and alleys, and for regulating, making and amending the water courses and common sewers in the city of Philadelphia, conformably to the state taxes on taxable persons, and on estates real and personal; for explaining and amending the acts, passed in the year one thousand seven hundred and seventy-nine, for assessing and levying the said state taxes; and for encreasing the recompence of county commissioners and assessors: passed 18th March, 1780; recorded in law book vol. I. page 372; repealed.
891. An act for the regulation of the militia of the commonwealth of Pennsylvania: passed 20th March, 1780; recorded in law book vol. I. page 374; repealed.
892. An act to discontinue a road called Palmer's lane, in the township of the Northern-Liberties, in the county of Philadelphia, and near to the lower falls of Schuylkill: passed 20th March, 1780; recorded in law book vol. I. page 384; obsolete.
894. An act for procuring a supply of provisions and other necessaries, for the use of the army: passed 23d March, 1780; recorded in law book vol. I. page 385; obsolete.
895. An act further to continue such parts of an act, entitled an act to empower the supreme executive council and justices of the supreme court to apprehend suspected persons, and to increase the fines to which persons are liable for neglecting to perform their tour of militia duty, as relates to the apprehending of suspected persons: passed 24th March, 1780; recorded in law book vol. I. page 387; expired.
896. An act for striking the sum of one hundred thousand pounds in bills of credit, for the present support of the army, and for establishing a fund for the certain redemption of the same, and for other purposes therein mentioned: passed 28th March, 1780: recorded in law book vol. I. page 387; obsolete.
897. An act for the greater ease of the militia, and the more speedy and effectual defence of this state: passed 26th May, 1780; recorded in law book vol. I. page 390; obsolete.
898. A supplement to an act, entitled an act to compel the settlement of the public accounts, and for other purposes therein mentioned: passed 30th May, 1780; recorded in law book vol. I. page 391; repealed.
900. An act to suspend the operation, for a limited time, of the several laws of this commonwealth, for making the bills of credit of the United States a legal tender in the payment of debts, equal to gold and silver: passed 31st May, 1780; recorded in law book vol. I. page 394; expired.
901. An act for funding and redeeming the bills of credit of the United States of America, and for providing means to bring the present war to a happy conclusion: passed 1st June, 1780; recorded in law book vol. I. page 394; obsolete.
902. An act for procuring an immediate supply of provisions for the federal army, in its present exigency: passed 1st June, 1780; recorded in law book vol. I. page 397; expired.

A. D.

1780.

- CHAPTER 903. An act to remedy the inconveniences of holding the annual elections in the fourth district of the county of Cumberland, and the second district in the county of Bedford at the places heretofore appointed by the laws of this commonwealth: passed 20th September, 1780; recorded in law book vol. I. page 399; repealed.
904. A supplement to the act, entitled an act for regulating and establishing admiralty jurisdiction: passed 22d September, 1780; recorded in law book vol. I. page 399; repealed.
905. A supplement to the act, entitled an act for the regulation of the militia of the commonwealth of Pennsylvania: passed 22d September, 1780; recorded in law book vol. I. page 401; repealed.
906. An act to revive and continue, for a further limited time, the act for laying an embargo on the exportation of provisions from this state, by sea, for a limited time: passed 22d September, 1780; recorded in law book vol. I. page 402; repealed.
907. An act to continue for a longer time the act, entitled an act to suspend the operation, for a limited time, of the several laws of this commonwealth, for making the bills of credit of the United States a legal tender in the payment of debts, equal to gold and silver: passed 22d September, 1780; recorded in law book vol. I. page 402; expired.
909. An act to settle and adjust the accounts of the troops of this state, in the service of the United States, and for other purposes therein mentioned: passed 18th December, 1780; recorded in law book vol. I. page 404; obsolete.
910. A supplement to an act, entitled an act for funding and redeeming the bills of credit of the United States of America, and for providing means to bring the present war to a happy conclusion: passed 19th December, 1780; recorded in law book vol. I. page 406; obsolete.
911. An act to permit the exportation of flour of wheat from this state by sea, under certain limitations and restrictions: passed 22d December, 1780; recorded in law book vol. I. page 407; repealed.
912. An act to revive and amend an act, entitled an act to suspend the operation for a limited time of the several laws of this commonwealth, for making the bills of credit of the United States a legal tender in the payment of debts, equal to gold and silver: passed 22d December, 1780; recorded in law book vol. I. page 409; expired.
913. A supplement to an act, entitled an act for striking the sum of one hundred thousand pounds in bills of credit, for the present support of the army, and for establishing a fund for the redemption of the same, and for other purposes therein mentioned: passed 23d December, 1780; recorded in law book vol. I. page 410; repealed.
914. An act for an impost on goods, wares and merchandize, imported into this state: passed 23d December, 1780; recorded in law book vol. I. page 410; repealed.
915. An act to complete the quota of the federal army assigned to this state: passed 23d December, 1780; recorded in law book vol. I. page 413; expired.
916. An act to suspend the operation of the several laws of this commonwealth, making the bills of credit made current by the resolves of the late assemblies of Pennsylvania, and the bills of credit issued by the assembly of this state the twentieth day of March, in the year of our Lord one thousand seven hundred and seventy-seven, legal tender: passed 20th February, 1781; recorded in law book vol. I. page 415; expired.

1781.



A. D.

1781. CHAPTER 917. An act to repeal the act, entitled an act to revive and continue, for a further limited time, the act for laying an embargo on the exportation of provisions from this state, by sea, for a limited time; and also certain parts of an act, entitled an act to permit the exportation of flour of wheat from this state, by sea, under certain limitations and restrictions: passed 27th February, 1781; recorded in law book vol. page 415; expired.
918. An act to dissolve the marriage of Giles Hicks with his wife Hester Hicks, late Hester M'Daniel: passed 9th March, 1781; recorded in law book vol. I. page 416; private act; obsolete.
921. An act to prevent the attainder of Daniel Rundel and Matthias Aspden for a limited time on condition that they render themselves, to take their trial on or before a certain day, therein limited and appointed: passed 31st March, 1781; recorded in law book vol. I. page 420; private act; obsolete.
922. An act for vesting the estate late of Henry Hugh Ferguson in Elizabeth his wife: passed 2d April, 1781; recorded in law book vol. I. page 421; private act; obsolete.
923. An act to revive an act, entitled an act to revive an act, to prevent the trespassing upon the uninclosed grounds, lying in the townships of Passyunk, Moyamensing, Northern-Liberties and Germantown, in the county of Philadelphia, and to extend the said act to the adjoining township of Bristol, in the same county, and to prevent swine from running at large within the said townships, for a limited time: passed 2d April, 1781; recorded in law book vol. I. page 421; expired.
926. An act to vest in the congress of the United States a power to levy duties of five per centum, ad valorem, on certain goods and merchandize imported into this commonwealth, and on prizes and prize goods condemned in the court of admiralty of this state, after the first day of May, one thousand seven hundred and eighty-one, and for appropriating the same: passed 5th April, 1781; recorded in law book vol. I. page 426; repealed.
927. An act for amending and continuing an act, entitled an act for the support of the government of this province, making the excise on wine, rum, brandy and other spirits, more equal, and preventing frauds in the collecting and paying the said excise: passed 6th April, 1781; recorded in law book vol. I. page 427; repealed.
928. An act for emitting the sum of five hundred thousand pounds in bills of credit, for the support of the army, and for establishing a fund for the redemption of the same, and for other purposes therein mentioned: passed 7th April, 1781; recorded in law book vol. I. page 428; obsolete.
930. An act to amend the acts, entitled an act for the more effectual supply and honourable reward of the Pennsylvania troops, in the service of the United States of America; and the act, entitled an act to settle and adjust the accounts of the troops of this state, in the service of the United States, and for other purposes therein mentioned: passed 10th April, 1781; recorded in law book vol. I. page 433; obsolete.

*The following acts were disallowed and repealed in council, on the 7th of February, 1705.*

THE law concerning liberty of conscience.  
 An act against riots, rioters and riotous sports, plays and games.  
 An act against adultery and fornication, &c.  
 An act against rape or ravishment.  
 An act against incest, sodomy and bestiality.  
 An act against bigamy.  
 An act against robbing and stealing.  
 An act against breaking into houses.  
 An act against firing of houses, &c.  
 An act against murder.  
 An act for county seals, and against counterfeiting hands and seals.  
 An act about recording of deeds.  
 An act limiting the presentments of the grand jury.  
 The law about attachments.  
 An act for naturalization.  
 An act for the ascertaining the descent of lands, and better disposition of estates of persons intestate.  
 An act to prevent immoderate fines.  
 An act about defalcation.  
 An act determining debts under forty shillings.  
 An act to oblige witnesses to give evidence, and to prevent false swearing.  
 An act confirming devises of lands and validity of nuncupative wills.  
 An act for empowering widows and administrators to sell so much of the land of intestates, as may be sufficient to clear their debts, &c.  
 An act for priority of payments to the inhabitants of this government.  
 An act for the trial of negroes.  
 An act about departers out of this province.  
 An act against mixing and adulterating strong liquors.  
 The law against drunkenness and healths-drinking.  
 An act for bailing of prisoners, and about imprisonment.  
 An act for the effectual establishment and confirmation of the freeholders of this province and territories, their heirs and assigns, in their lands and tenements.  
 The law about arrests, and making debtors pay by servitude.  
 The law about false imprisonment.  
 The law about acknowledging deeds in court.  
 The law about seven years possession.  
 The law about the manner of giving evidence, and against such as lie in conversation.  
 The law for the confirmation of the laws of this government.  
 An act against menacing, and assault and battery.  
 An act against sedition, spreading false news, and defamation.  
 An act of privileges to a freeman.  
 An act for the names of days and months.  
 An act to ascertain the number of members of assembly, and to regulate the elections.  
 An act directing the attests of several officers and ministers.  
 An act against speaking in derogation of courts.  
 An act for the preservation of the person of the proprietary and governor.  
 An act requiring all masters and commanders of all ships and vessels to make report at the town of New-Castle, that are, or shall be bound to and from the sea.  
 An act for the levying of fines.  
 The law against scolding.  
 An act to prevent the sale of ill-tanned leather, and working the same into shoes and boots.  
 An act that no public-house or inn within this government be kept without licence.  
 An act against pirates and sea robbers.  
 An act for erecting a bridge over the creek at Chester, in the county of Chester.  
 The law about trials by twelve men.  
 An act for establishing courts of judicature in this province, and the counties annexed.  
 An act against swine running at large in several of the townships within this government.

*The following acts were repealed in council on the 24th of October, 1709.*

An act against riotous sports, plays and games.  
 An act limiting the presentments of the grand jury.  
 An act for the further securing the administration of the government of this province.  
 An act for the acknowledging and recording of deeds.



- An act directing the qualifications of magistrates and officers, as also the manner of giving evidence.
- An act for the better proportioning the rates of money in payments made upon contracts according to the former regulation,

*The following acts were repealed in council on the 20th of February, 1713.*

- An act for ascertaining the rates of money for payments of debts, and preventing exactions in contracts and bargains, made before the 1st of May, 1709, and passed in Pennsylvania, October 14th, 1708.
- An act for establishing courts of judicature, passed in February, 1710.
- An act for regulating and establishing fees.
- An act for acknowledging and recording of deeds.
- An act directing an affirmation to such who cannot for conscience sake take an oath.
- An act of privileges to a freeman.
- An act against riotous sports, plays and games.
- An act for priority of payment of debts to the inhabitants of this province.
- An act for regulating party-walls and buildings in Philadelphia.
- An act for laying a duty on negroes, wine, rum, and other spirits, cyder, and vessels.
- An act confirming patents and grants, 1711.
- An act for better government of the city of Philadelphia.
- An act for empowering religious societies to buy, hold, and enjoy lands, tenements and hereditaments.
- A supplementary act to a law about the manner of giving evidence.
- An act to prevent the importation of negroes and indians into this province.
- A supplementary act to an act, entitled an impost act, laying a duty on negroes, rum, wine, spirits, cyder, and vessels, and appropriating certain sums of money arising by the same, and other public stock of this province.

*The following act was repealed in council on the 8th of January, 1719.*

- An act for vesting the house and lot of ground, lying in Philadelphia, late the estate and inheritance of William Clark, of Lewes, in the county of Sussex, deceased, in trustees, to be sold, for the payment of his debts, &c.

*The following acts were repealed in council on the 21st of July, 1719.*

- An act for amending divers laws therein mentioned.
- An act of privileges to a freeman.
- An act for empowering religious societies to buy, hold and enjoy lands, tenements, &c.
- An act for establishing the courts of quarter sessions in this province.
- An act for establishing the several courts of common pleas in this province.
- An act for erecting a supreme or provincial court of law and equity in this province.
- An act for corroborating the circular line between the counties of Chester and New-Castle.
- An act for the ease of such, as conscientiously scruple to take the solemn affirmation formerly allowed in Great-Britain.
- An act for the better ascertaining the practice of the courts of judicature in this province.
- An act for laying a duty on wine, rum, brandy and spirits, cyder and hops, imported.
- An act for laying a duty on negroes imported into this province.

*The following act was repealed in council on the 5th of July, 1726.*

- An act directing the process of summons against freeholders.

*The following act was repealed in council on the 12th of May, 1740.*

- A supplement to an act of assembly of this province, entitled an act prescribing the forms of declaration of fidelity, abjuration and affirmation, instead of the forms heretofore required in such cases.

*The following act was repealed in council on the 17th of December, 1746.*

- An act imposing a duty on persons convicted of heinous crimes, brought into this province, and not warranted by the laws of Great-Britain; and to prevent poor and impotent persons being imported into the same.

*The following acts were repealed in council on the 7th of July, 1756.*

- An act for extending so much of an act of parliament, entitled an act for punishing mutiny and desertion, and for the better payment of the army and their quarters, passed in the twenty-eighth year of the present reign, as relates to the quartering and billeting of soldiers, and payment of their quarters, in that part of Great-Britain called England.
- An act for the better ordering and regulating such as are willing and desirous to be united for military purposes within this province.

*The following acts were repealed in council the 22d of September, 1760.*

- An act for re-emitting the bills of credit of this province, heretofore re-emitted on loan, and for striking the further sum of thirty-six thousand six hundred and fifty pounds, to enable the trustees to lend fifty thousand pounds to colonel John Hunter, agent for the contractors with the right honourable the lords commissioners of his majesty's treasury, for his majesty's service.
- A supplement to the act, entitled an act for re-emitting the bills of credit of this province, heretofore re-emitted on loan, and for striking the further sum of thirty-six thousand six hundred and fifty pounds, to enable the trustees to lend fifty thousand pounds to colonel John Hunter, agent for the contractors with the right honourable the lords commissioners of his majesty's treasury, for his majesty's service.
- An act for recording warrants and surveys, and for rendering the real estates and property within this province more secure.
- An act for the more effectual suppressing of lotteries and plays.
- A supplement to the act, entitled an act for establishing courts of judicature in this province.
- An act for the relief of the heirs, devisees, and assigns of persons born out of the king's legiance, who have been owners of lands within this province, and have died unnaturalized.

*The following act was allowed to remain unrepealed, upon a stipulation, entered into by the colonial agents, that certain amendments should be made, to prevent the operation of the proposed tax on the proprietary estate. The act, however, has expired; and all proprietary privileges and exemptions are extinguished by the revolution, and laws passed in consequence of it.*

- An act for granting to his majesty the sum of one hundred thousand pounds, and for striking the same in bills of credit in the manner herein after directed, and for providing a fund for sinking the said bills of credit by a tax on all estates, real and personal, and taxables, within this province.





# ACTS

OF THE

## General Assembly of Pennsylvania. (a)

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WILLIAM PENN, GOVERNOR.

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1700.

(a) Previously to the period, at which the printed copy of the Laws (commonly called *Galloway's* edition) commenced, there had been held several sessions of the General Assembly, during which a considerable number of laws were enacted; but at that early period, a general preamble was prefixed to the laws of each session, and they were distributed numerically, into chapters, without distinction in date, or title. The laws passed during the period allu-

ded to have either been repealed, or supplied, or are become obsolete. The first General Assembly of Pennsylvania, and the territories thereunto belonging, was holden at Chester, on the 7th of December, 1682. (*Note to former edition.*)

[In pursuance of the Act of Assembly, authorizing this Edition, the heads of all the laws, repealed, obsolete, or expired, are omitted in the body of the work, and will be found in the beginning of each volume.]

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### CHAPTER XI.

#### *An ACT against forcible entry.*

*BE it enacted*, That whosoever shall violently or forcibly enter into the house or possessions of any other person within this province or territories, being duly convicted thereof, shall be punished as a breaker of the peace, and make such satisfaction to the party aggrieved as the circumstances of the fact will bear.

Forcible  
entry,  
how pu-  
nished.

Passed in 1700.—Recorded A. vol. I. page 8. (b)

(b) By the 5th section of an act entitled a "Supplement to the act entitled "An act to extend the powers of the Justices of the peace of this state," passed March 1st, 1799, chap. 2012, after reciting that doubts had been entertained with respect to the mode of recovering the forfeitures and penalties prescribed in the following acts passed in the year

1700, to wit; "An act against forcible entry," "An act against removing land-marks," "An act against defacers of charters," and "An act about cutting timber trees," it is enacted, that in all cases arising under the said acts, *where the penalty is fixed*, and the court not mentioned in which the recovery shall be had, the same shall be prosecuted in the court



1700. of quarter sessions of the county where the offence is committed, &c.

But as there is no *penalty fixed* by the act in the text, it would seem to be questionable if any additional remedy is provided against the offence of forcible entry, by the act of 1799. It is, however, immaterial, as the power of the court of quarter sessions to punish this offence by indictment, has never been questioned.

The foregoing section of the act of March 1st, 1799, is re-enacted in the same words, by the act of March 20th, 1810.

The act in the text is analogous to the English statute of 5 Rich. 2. stat. 1. chap. 8 which, therefore, has been considered as not extending to *Pennsylvania*. But the remedy in cases of forcible entry and detainer is rendered effectual by the statutes of 15th Rich. 2. chap. 2.—8 Hen. 6. chap. 9.—31 Eliz. chap. 11.—and 21 Ja. 1. chap. 15. which have been adopted in practice, and are reported by the Judges to extend here. The report will be found in the Legislative journals of 1808-9—and so much of the statutes themselves, as are necessary to shew the remedy, and direct the proceedings, will be found in *Hawkins' Pleas of the Crown*, *Burn's Justice*, and *Bacon's Abridgment*.

Justices of the peace have power to convict for this offence of forcible entry, and a jury may be summoned by their authority, to inquire of the force. They may, on conviction, award restitution, and must make a record of their proceedings. The method of proceeding is somewhat similar to that under the landlord and tenant act, (as it is commonly called,) and useful precedents of the whole record and proceedings will be found in *Burn's Justice*, and *Graydon's Justice*.

The English cases upon the construction and subject matter of these important statutes, being impliedly precluded by the authority under which this edition of the laws is published; the only decisions of the courts of *Pennsylvania* applicable to this branch of the law, are the following:

*Respublica v. Shryber and others.*

In this case it was resolved, on solemn argument, that *title* could not be given in evidence by the defendant to prevent restitution. 8 Hen. 6. c. 9.

And *M'Kean, C. J.* ruled, that the wife of the prosecutor might be examined as a witness to prove the force; for, otherwise, the statutes might be eluded in some cases.

And in the same cause, the indictment stated "that the prosecutor was seized in his demesne as of fee," without saying when he was seized; so that it might be

he was seized at the time of the indictment found, and not at the time of the forcible entry. 2d, "that he was seized in his demesne as of fee," and "his peaceable possession thereof, as aforesaid, continued until &c." which was alleged to be repugnant and inconsistent, inasmuch as he could not be both *seized* and *possessed* at the same time. And on motion in arrest of judgment for these causes, the Court overruled both objections. And *M'Kean, C. J.* said that the words "his peaceable possession thereof as aforesaid," were surplusage, and ought to be rejected. 1 Dallas, 68.

It is necessary that the prosecutor should have a *certain* interest in the property of which he is alleged to have been dispossessed; and his interest must be stated on the record. This principle is exemplified by the following case:

*Respublica v. Campbell.*

This was an inquisition of forcible entry, &c. taken before two justices of *Lancaster* county. The proceedings being removed by *certiorari* into this (the supreme court,) *Bradford* moved that they might be quashed; and shewed for cause, that the defendant is stated in the inquest to have been *possessed*, but no *estate*, or *term*, is laid; which, he said, was adjudged to be insufficient in a case of *Respublica v. Scott*. The court there observing, that *Hawkins* was express, that an inquisition of forcible entry, &c. will not lie in a case of a tenant at will.

The proceedings were accordingly quashed. 1 Dallas, 354.

But mere informality in the expressions will not vitiate, if sufficient appears upon the whole record to designate the nature of the estate or interest; as in

*The Commonwealth v. Fitch.*

Which was a *certiorari* to remove the judgment and proceedings in a case of forcible entry and detainer, from *Luzerne* county. The inquisition stated that N. B. was *possessed* in his demesne as of fee, &c. and continued so *seized* and *possessed*, until the defendant did enter; and him the said N. B. thereof *disseized*, &c.

It was objected, that the prosecutor is stated to have been only *possessed* of the premises, whereas the evidence proved him to have been *seized*.

But, by the court, there is some informality in the expressions; but surely stating that the prosecutor was *disseized* necessarily implies a previous *seizin*. Judgment affirmed. 4 Dallas, 212.

Evidence of force against a lessee for years, will not warrant a conviction on an indictment of forcible entry and detainer stating it to be against the freehold of the landlord.



*Pennsylvania v. Grier & al.*

Indictment for forcible entry into, and detainer of the close of W. M. containing, &c. then and there being the freehold and frank tenement of the said W. M.

The evidence being, that W. M. had leased the premises to A. S. who entered, and was possessed when the forcible entry was committed, the court directed the jury that the evidence did not apply to this indictment, because it is not laid, that A. S. was ousted or dispossessed, and W. M. disseized. 1 Hawk. 148. Sect. 38.—Cumberland, Octr. 1791. S. MSS.—And the same point was adjudged at nisi prius in *Respublica v. Sloane—Pittsburgh*, May, 1797. The inquisition which had been taken before one Justice, stated, that *I. Denniston* was lawfully and peaceably seized in his demesne as offee, of &c.

The facts disclosed in evidence, were, that *I. Depniston* and *C. Campbell*, had employed persons to erect a cabin on the land (which lay on the N. W. side of the river Allegheny, and on the east side of Buffaloe Creek) which was done accordingly in August, 1793, and some rails were made. On the 21st of November, 1793, a survey was made by the deputy surveyor for one I. K. by virtue of his improvement began 14th November, 1793, and that evening they slept in the cabin. In September 1795, hands were employed to work the ground, and 2 1-2 acres were grubbed; and some time after the cabin was thrown down by some persons unknown, and a new one built. The defendant occupied the tract.

Evidence was offered to prove that D. and C. had leased the land to a tenant, and that defendant had dispossessed him and forcibly kept him out; but it was overruled. If the prosecution is founded on an injury done to the lessee for years, the indictment should have been framed accordingly, under the stat. of 21 Jac. 1. c. 15. but here the force is laid against the seizin of D. So, if D. and C. were the joint owners of the land, and were disseized, it should have been so stated. The defendant was accordingly acquitted. MSS. *Nisi Prius Reports*.

So, indictment for forcible entry and detainer of a messuage, in possession of W. C. for a term of years. The evidence was of a forcible entry into a field; and no lease was produced; and held that the indictment could not be supported. *Huntingdon*, April, 1792. *Pennsylvania vers. Geo. Elder & al.* S. MSS.

And, an indictment for a forcible entry into a messuage tenement and tract of

land, without mentioning the quantity of acres, was held bad after conviction. 1700. MSS. Reports Sup. Court.

Prosecutions for this offence ought to be discouraged, unless there is an evident force against the party in actual possession. Thus, in the case of the *Commonwealth v. George Dixon & al.* Cumberland, Oct. 1792, where, on an indictment for a forcible entry, no other force was proved, than such as is implied in every trespass, the defendants were held not to be within the statutes against forcible entry, and were acquitted. S. MSS.

So, in *Respublica v. Devore. Bedford*, April, 1795. It appeared that one T. was in possession of the premises for 8 or 9 years, by having tenants thereon, who paid him rent. I. B. his last tenant, permitted C. D. (the brother of defendant) who claimed title therein, to come into possession in 1792. The defendant cultivated the land for his brother, but no one resided on it. In the spring of 1793, he was asked by the prosecutor to accompany him to the farm, which he did, and the prosecutor there requested him to give him possession. The defendant refused, and said the right was his brother's. T. then laid his hand gently on him, and desired him again to deliver up the possession. The defendant picked up a stick and bid him stand off. The prosecutor, who was admitted a witness merely as to the force, swore that he felt no fears, but expected to be struck if he had pressed him further.

The court said, the statutes of forcible entry and detainer were made for very wise and good purposes, when the spirit of the times was very different from the present; and are still beneficial, but in a variety of instances have been prostituted and abused. That their provisions, though formerly construed liberally, should, from the change of circumstances, now receive a strict construction. They were made for the security of persons in the actual possession of lands, which could scarcely be said of the prosecutor in the present instance. They require, as an indispensable ingredient in the offence, "force and arms, and a strong hand." The defendant was acquitted. MSS. *Nisi Prius Reports*.

And in *Sloane's* case before cited, the Judges said that the great object of the statutes was to punish lawless persons for forcibly dispossessing their peaceable neighbours from their quiet possessions, but not to turn mere civil suits into criminal procedures.



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## CHAPTER XV.

### *An ACT against removing of land-marks.*

1700.

Remov-  
ing land-  
marks,  
how pu-  
nished

**FOR** the greater security and certainty of the boundaries of land, *Be it enacted*, That no person in this province, or counties annexed, shall cut, fell, alter or remove any certain bounded tree, or other allowed land-mark, to the wrong of his neighbour, or any other person, under the penalty of any sum not less than ten pounds.

Passed in 1700.—Recorded A. vol. I. page 10.

See the acts of March 1st, 1799, and March 20th, 1810, and the first part of the note to the preceding act. Chap. 11, pa. 2.

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## CHAPTER XVI.

### *An ACT against defacers of charters, &c.*

Forgery  
how pu-  
nished.

**WHEREAS** the security of titles and property, in a great measure, depends on the safety and certainty of writings and records, *Be it enacted*, That whosoever shall forge, deface, corrupt or embezzle any charters, gifts, grants, bonds, bills, wills, conveyances or contracts, or shall deface or falsify any inrolment, registry or record, within this province or territories, shall forfeit double the value of the damage thereby sustained, one half whereof shall go to the party wronged; and the person so offending shall be discarded from all places of trust, and publicly disgraced, as a false person, in the pillory, or otherwise, at the discretion of the court before whom the cause shall be tried.

Passed in 1700.—Recorded A. vol. I. page 10. (c)

(c) See the acts of March 1st, 1799, and March 20th, 1810, and the first part of the note to chap. 11. ante. pa. 2.

The punishment of the pillory is taken away, and by an act entitled "An act to reform the penal laws of this state," sect. 4. passed April 5th, 1790, (post. chap. 1505) it is enacted that every person convicted of bigamy, &c. or of any other offence not capital, for which, by the laws in force before the act entitled "An act to amend the penal laws of this state," (passed Sept. 15th, 1786, and repealed by the act of 1790) burning in the hand, placing in and upon the pillory, &c. is, or may be inflicted, shall, instead of such parts of the punishment, be fined, and sentenced to undergo a confinement at hard labour, be fed and clothed as is in that act (c. 1505) directed, for any term not exceeding two years, in the discretion of the court.

By the "Act for acknowledging and recording of deeds," passed in 1715, (chap. 208) sect. 7. If any person shall forge any entry of the said acknowledgments, certificates, or indorsements, whereby the freehold or inheritance of any man may be charged, he shall be lia-

ble to the penalties against forgers of false deeds, &c.

And, by the 5th section of the act entitled "An act for the better preventing of crimes, and for abolishing the punishment of death in certain cases," passed April 22d, 1794, (chap. 1766) every person who shall be concerned in printing, signing, or passing, any counterfeit notes of the banks of Pennsylvania, North America, or the United States, knowing them to be such, or altering any genuine notes of any of the said banks, shall be sentenced to undergo a confinement in the gaol and penitentiary house, for any time not less than four, nor more than fifteen years; and shall also pay such fine as the court shall adjudge, not exceeding one thousand dollars. Or, of the Philadelphia bank, by the 7th sect. of its incorporating act, passed March 5th, 1804, (chap. 2439.)

By the 20th section of the act to regulate the general elections within this commonwealth, passed February 15th, 1799, (chap. 2009) if any person shall knowingly, publish, utter, or make use of any forged or false receipt or certificate (for payment of taxes or of naturalization)

with intent to impose the same upon, or to deceive any judge or inspector, at any election, such person shall incur a fine of fifty dollars, and suffer six months imprisonment.

And, by the 22d section of the same act, if any judge of the election, inspector, clerk, or other person, shall deface, alter, embezzle or destroy, any of the tickets, lists, or tally papers, or certificates, after the election shall be closed, and the said tickets, &c. shall have been deposited in a box, sealed, and delivered to the nearest Justice, &c. such person, so offending, shall forfeit and pay the sum of three hundred dollars to any person who shall sue for the same within six months, and suffer imprisonment for a term not exceeding twelve months.

With respect to the forging, and counterfeiting any current gold or silver coin, see the acts of Feb'y 21, 1767, and April 22d, 1794, (chap. 557, 1766.)

By the act entitled "A further supplement to the penal laws of this state," passed April 4th, 1807, sect. 1, (chap. 2305) instead of two years imprisonment, to which the power of the courts of this commonwealth is limited, in and by the fourth section of an act to reform the penal laws of this state, the said courts are invested with the power of extending the confinement in such cases, to a period not exceeding seven years in their discretion, according to the circumstances of the case before them; except in cases of bigamy, or of being accessory after the fact, in any felony, or of receiving stolen goods, knowing them to have been stolen.

And by the second section of the said act any person convicted in any county in this state, other than the county of Philadelphia, of any of the offences alluded to in the said section, for which he or she shall be sentenced to hard labour, for the space of two years or upwards, may, at the discretion of the court in which such person shall be convicted, within three months after such conviction, be removed to the gaol of Philadelphia, &c. for the remaining part of the time, &c. 1700.

By an act entitled "An act for county seals, and against counterfeiting hands and seals," passed in 1705, (post. chap. 149) counterfeiting the hand or seal of another, with intent to defraud, is punishable by three months imprisonment at hard labour, and a fine of treble the value he or she shall have defrauded, or attempted to have defrauded, thereby, to the use of the party wronged. And counterfeiting the broad seal, or privy seal of the province, is punishable by seven years imprisonment at hard labour, and fined at the discretion of the court, in any sum not exceeding one hundred pounds, &c.

So far as regards the actual offence of Forgery, it is now subject to punishments by the existing penal laws of the State. But in tracing the history of our laws, it is worthy of remark, that the punishment by hard labour, now so beneficially applied for the punishment of various crimes, may be found in our body of laws, as early as the year 1705, in the last mentioned act, and also, in chap. 122.

## CHAPTER XXVI.

### *An ACT about binding to the peace.*

*BE it enacted*, That whosoever shall threaten the person of another, to wound, kill or destroy him, or do him any harm in person or estate, and the person so threatened shall appear before a Justice of the Peace, and attest, that he believes that by such threatening he is in danger to be hurt in body or estate; such person so threatening as aforesaid shall be bound over, with one sufficient surety, to appear at the next Sessions or County Court, to be holden for the county where such offence was committed, to be proceeded against according to law; and in the mean time to be of his good behaviour, and keep the peace towards all the King's subjects. One justice may bind to the peace.

Passed in 1700.—Recorded A. vol. I. page 14.

See the case of the *Commonwealth v. Duane*, & 1 Binney, 98, (in note,) and the Statute 34 Edward, 3, in the note to next chapter; (41.) pa. 6.



1700.

## CHAPTER XLI.

*An ACT against Barrators.*

Barratry.

*BE it enacted*, That if any person within this province and territories, in any court within the same, be indicted, proved and adjudged a common barrator, vexing others with unjust and vexatious suits, he shall be adjudged a common barrator, and his suits and actions rejected, if the court see cause for the same, and he punished for his barratry.

Passed in 1700.—Recorded A. vol. 1. page 32. (*d*)

(*d*) The act in the text, although it declares that a barrator shall be punished for his barratry, leaves the punishment at the discretion of the court. It is an offence at common law, and is indictable in the sessions. It is mentioned in the statute 34 Edw. 3, c. 1, which directs the mode of punishment. Such parts of which statute, as are distinguished by the numbers 2, 3, 4, 5, 6, and 10, are reported to extend to Pennsylvania, and are in the following words: “(2) And they (the Justices) shall have power to restrain the offenders, rioters, and all other barrators, and to pursue, arrest, take and chastise them according to their trespass or offence; (3) and to cause them to be imprisoned and duly punished according to the law and customs of the realm, and according to that which to them shall seem best to do by their discretions and good advisement; (4) and also to inform them, and to inquire of all those that have been pillors and robbers in the parts beyond the sea, and be now come again, and go wandering, and will not labour as they were wont in times past; (5) and to take and arrest all those that they may find by indictment, or by suspicion, and to put them in prison; (6) and to take of all of them that be not of good fame, where they shall be found, sufficient surety and mainprise of their good behaviour towards the king and his people, and the other duty to punish, to the intent that the people be not by such rioters or rebels troubled nor endangered, nor the peace blemished, nor merchants nor other passing by the highways of the realm disturbed, nor put in the peril which may happen of such offenders; (10) and that fines, which are to be made before Justices for a trespass done by any person, be reasonable and just, having regard to the quan-

tity of the trespass, and the causes for which they be made.”

A barrator is defined to be a common mover, exciter, or maintainer of suits or quarrels in courts of record, or otherwise; or in the country, by taking and keeping possession of lands in controversy—by all kinds of disturbance of the peace—or by spreading false rumours and calumnies, whereby discord and disquiet may grow among neighbours. The offence is frequent, though too seldom punished; and we find no printed cases in Pennsylvania respecting it. It is, however, held, that it is essential to the validity of an indictment for this offence, that it should charge the defendant with being a *common barrator*, which is a term of art appropriated by law to this crime, and cannot be supplied by words which may impart as much; such as, common oppressor and disturber of the peace, or a stirrer up of strife among neighbours. And no one can be a barrator in respect of *one* act, for that would not make him a *common* barrator.

As the indictment is, therefore, general, it has become a settled principle, that, as no particular facts are stated, and as, from the nature of the crime, it consists of the repetition of several acts, which may have happened in several places, the prosecutor must give the defendant, before the trial, a note of the particular acts of barratry which he intends to prove against him; and if he do not, the court will not suffer the prosecutor to proceed in the trial of the indictment; for otherwise it would be impossible for the defendant to prepare for his defence. It follows, of course, that the prosecutor will not be permitted to give evidence of any other acts of barratry than those which are stated in the note of particulars.

## CHAPTER XLIV.

*An ACT to prevent the grievous sins of cursing and swearing, within this province and territories.*

Blasphemy and profanely

*AND be it further enacted*, That whosoever shall wilfully, premeditately and despitefully, blaspheme or speak loosely and profanely



of Almighty GOD, CHRIST JESUS, the HOLY SPIRIT, or the SCRIPTURES of TRUTH, and is legally convicted thereof, shall forfeit and pay the sum of ten pounds, for the use of the poor of the county, where such offence shall be committed, or suffer three months imprisonment at hard labour as aforesaid, for the use of the said poor. 1700.

speaking,  
how to be  
punished.

Passed in 1700.—Recorded A. vol. I. page 34. (e)

(e) So much of this act as related to profane cursing and swearing, is repealed: and supplied by the second section of the act entitled "An act for the prevention of vice and immorality, and of unlawful gaming, and to restrain disorderly sports and dissipation," passed April 22d, 1794 (chap. 1746) which enacts, that if any person of the age of sixteen years, or upwards, shall profanely curse or swear, by the name of GOD, CHRIST JESUS, or the HOLY GHOST, every person so offending, being thereof convicted, shall forfeit and pay the sum of 67 cents for every such profane curse or oath; and in case he or she shall refuse or neglect to pay the said forfeiture, or goods and chattels cannot be found where-

of to levy the same by distress, he or she shall be committed to the house of correction of the proper county, not exceeding 24 hours for every such offence, of which such person shall be convicted: and whosoever of the age of sixteen years or upwards, shall curse or swear by any other name or thing than as aforesaid, and shall be convicted thereof, shall forfeit and pay the sum of 40 cents for every such curse or oath; and in case such offender shall neglect or refuse to satisfy such forfeiture, or no goods or chattels can be found whereof to levy the same by distress, he or she shall be committed to the house of correction of the proper county, not exceeding 12 hours, for every such offence.

## CHAPTER XLVIII.

*An ACT for taking lands in execution for the payment of debts, where the Sheriff cannot come at other effects to satisfy the same.*

TO the end that no creditors may be defrauded of the just debts due to them by persons of this province or territories, who have sufficient real estates, if not personal, to satisfy the same, *Be it enacted*, That all lands and houses whatsoever, within this government, shall be liable to sale, upon judgment and execution obtained against the defendant, the owner, his heirs, executors or administrators, where no sufficient personal estate is to be found; with this due proviso, that the messuage and plantation, with its appurtenances, upon which the defendant is chiefly seated, shall not be exposed to sale before the expiration of one whole year after judgment is obtained; to the intent that the defendant, or any other on his behalf, may endeavour the redemption of the same: And before any such lands, messuages, or houses, or any other lands or houses whatsoever, taken in execution, shall be sold, they shall be duly appraised by twelve honest and discreet men of the neighbourhood; and that then it shall and may be lawful for the Sheriff to make sale of, and convey the same under his hand and seal, after which sale and appraisement made as aforesaid, such land and houses shall be and remain a free and clear estate to the purchaser or creditor, to whom they are so made over or sold, his heirs and assigns for ever, as fully and amply as ever they were to the debtor.

Real es-  
tates lia-  
ble to be  
sold for  
payment  
of debts.

But to its  
first ap-  
praised.

II. *Provided always, and be it further enacted*, That lawful interest shall be allowed to the creditor for the sum or value he obtained judgment for, from the time the said judgment was obtained till the time of sale, or till satisfaction be made.

Interest  
on judg-  
ment.



1700.

The chief  
message  
to be last  
taken in  
execution.

III. *Provided also*, That the chief plantation or messuage shall be the last taken in execution; and that where the appraisement of the lands taken in execution amounts to more than the debt, costs and damage, the creditor shall not be obliged in such case to take the whole, and pay the overplus, but shall only take so much as to satisfy the execution, and no more.

Passed in 1700.—Recorded A. vol. I. page 37. (f)

(f) The act for the appraisement of goods taken in execution, which had long been obsolete in practice, (chap. 40) was repealed by an act passed March 20th, 1810.

The act in the text is in a great measure supplied by the analagous provisions contained in the "Act for taking lands in execution for payment of debts," passed in 1705, (chap. 152,) which varies from this act, principally in the additional clause, that if the clear yearly profits will pay the debt in seven years, the land shall be delivered to the plaintiff upon a reasonable extent. *Graff v. Smith's adm'rs.* 1 Dallas, 481-2. (Note to former ed.)

This law, however, has never been repealed; nor is the second section supplied in any part of the act of 1705. The rule of construction therefore applies; that all acts in *pari materia*, are to be taken together, as if they were one law.

That part of this act, which provides that the home seat of a debtor shall not be sold till a year after judgment, (which provision is also carried into the 5th section of the act of 1705) is now obsolete, and not practised under. *Nisi Prius* MSS. reports. *Lesse of Moorhead and Pearce. Weetmoreland.* May 1799.

In *Morris's Executors and McConaughy.* 2 Dallas, 189-190. The court considered real property in *Pennsylvania*, as *assets* for the payment of debts; and always, in case of the deficiency of personal property, to be applied to discharge such debts.

This point had been previously fully considered in the above recited case of *Graff* and *Smith's* administrators, by a judge of great experience, who held, that real and personal estates, are both funds for the payment of debts. A fund, however, that does not actually go into the hands of the executor or administrator, as *assets in the ordinary way*; but, made such, by positive law, in another form; that is, creditors may issue executions, and sell it for payment of debts, on a judgment against the executor or administrator; for it is not necessary, nor has it been usual, to bring the action against the heir. They are made a fund for payment of all debts, and must necessarily have been intended by the legislature to be a certain and not a pre-

carious fund; for since it is declared, that the creditors may take them in execution on a judgment against the executor or administrator, it must be meant that they should have the fruit of that execution; and as there is the same reason under the law, that they should be equally liable with the personal estate from the death of the debtor, they must necessarily be liable in such manner, as to be answerable at all events, which can no otherwise be, than by considering them as *specifically* liable in *whosoever hands they may be*.

Lands of deceased persons, therefore, have always been considered as liable to be taken in execution for debt, in the hands of a purchaser from the heir or devisee.

And it has also been decided, that though a widow's right of dower, commences with her marriage, and is held so sacred a right, that no judgment, recognizance, mortgage, or any incumbrance whatever, made by the husband after the marriage, can, at *common law*, affect her right of dower; yet, under these acts of assembly, for making lands, chattels for the payment of debts, that as to lands taken in execution after the death of the debtor, the widow is barred of her dower. 1 Dallas, 483, 484, and see 2 Dallas, 127-8.

In the same case, page 486. It is held, that on a sale of lands under an order of the orphan's court, the purchaser will not be affected by the claims of creditors. The administrators sell by the words of a positive law, which gives jurisdiction to the Orphan's Court. And this point is recognized in *Spear, v. Hannum* and *Harlam*. Chester, April 1794. *Nisi Prius* MSS. Reports, and now see the intestate act of 19th April, 1794, sect. 21.

The case of *Hannum v. Spear*, came before the High Court of Errors and Appeals, at August Sessions 1795, and was finally decided by *Chew*, President. *Shippen, Smith and Biddle*, Justices.

The question is stated to have arisen on the will of *Elizabeth Ring*, who had given power to her executors to sell lands, for payment of legacies; and two points were made. 1st. Whether the power to sell, given by the will, was, in fact, for the payments of debts, or of



legacies? and, 2d, whether by the laws of *Pennsylvania*, the creditors of the testatrix had such a lien on her lands, as could not be defeated by the sale, which the executors had made, by virtue of the power in the will.

All the Court held, that if the power had been to sell for the payment of debts, the purchaser would have held the lands discharged of the debts.—*Chew*, President, added, That it has been the constant usage (and usage is the best interpreter of laws) to give, by will, the power to sell lands for the payment of debts. The titles of purchasers under such powers, has never, heretofore, been called in question; and they ought not now to be undermined. *Shippen*, J. said, There can be no satisfactory reason, why a testator should not have a power to order a sale of lands for the payment of his debts, provided the exercise of it does not militate with the general principle of the *lien*, which the law has given to creditors: or, as is said, by *Biddle*, J. a *bona fide* sale would be good against creditors and all the world.

The Court also held, that a sale by the executors, under a power to sell for the payment of *legacies*, is not valid against creditors. That the proceeds of the land, when disposed of, under a power to sell for the payment of legacies, cannot be considered as assets in the hands of the executor; so that if the sale were valid against creditors, they would be deprived of the security, which the policy, and positive provision of our law, meant to give them.

In this case at *Nisi Prius*, the case of *Morris's Lessee v. Smith* (MSS. Rep. Sup. Court) was cited, which determined, that lands aliened *bona fide*, by the heir, were subject to the debts of the ancestor; which follows and supports the same principle in *Graff v. Smith's* administrators. S. C. 4 Dallas, 119.

In closing this note, it may not be useless to trace these politic and moral laws to their source.

In the laws agreed upon in *England*, May 5th, 1682. §. 14. it is stipulated "That all lands and goods shall be liable to pay debts, except where there is legal issue, and then all the goods, and one third of the lands only."

This liability was extended by an act entitled, "How lands and goods shall pay debts"—chap. 5th, which enacts, "That all lands and goods shall be liable to pay debts, except where there shall be legal issue, and then all the goods, and one half of the land only, in case the land was bought before the debts were contracted."

Then the act entitled, "How the estate of any person shall be disposed of at his death," authorizes a particular disposition, "*his debts being first paid.*" Chap. 119.

1700.

The act of 1688, chap. 189, provides "that all lands whatsoever, and houses, shall be *liable* to sale upon judgment and execution against the defendant, his heirs, executors and administrators:" but this act was limited in its duration to one year, and until 20 days after the rising of the next General Assembly. This law was continued, under the administration of Governor *Fletcher*, June 1st, 1693, in consequence of the petition of the freemen of the Province in General Assembly, and was afterwards re-enacted, in the same words in 1694. The act of 1700 followed, in the same terms, with the additional words, "where no sufficient personal estate is to be found." The acts of 1700 and 1705, are now in force.

It is, however, provided, by the 4th section of the supplement to the intestate act, passed April 4th, 1797, (post. chap. 1938,) That no debts, except they be secured by mortgage, judgment, recognizance or other record, shall remain a *lien* on the lands and tenements of deceased persons, longer than seven years after the decease of such debtor, unless an action for the recovery thereof be commenced and duly prosecuted against his or her heirs, executors or administrators, within the said period of seven years; or a copy or particular written statement, of any bond, covenant, debt or demand, where the same is not payable, within the said period of seven years, shall be filed within the said period, in the office of the prothonotary, where the lands lie; with the usual saving in cases of infants, *femes covert*, *non compos mentis*, or absence out of the *United States*: in which cases the *lien* shall remain on the said lands and tenements (notwithstanding the said term be expired) until four years after the disability is removed. And a similar provision in the original act of April 19th, 1794, but which saved the *lien* in case of a *demand* made within seven years, though no suit be commenced, is repealed.

The above provision was made merely for the protection of *bona fide purchasers*.

The second section of this act is not incorporated with the act of 1705: on this head the following decisions have been made.

*Shippen*, C. J. An act of the General Assembly has declared, "that lawful interest shall be allowed to the creditor



1700. for the sum or value he obtained judgment for, from the time judgment was obtained, till the time of sale, or till satisfaction be made." Interest is therefore, generally speaking, a legal incident of every judgment. *Fitzgerald v. Caldwell's executors.* 4 Dallas, 252.— See pa. 289. (*Ibid.*)

Interest is due for the sum awarded, on a parol award (MSS. Reports Sup. Court) Where judgments are affirmed upon writ of error, the execution may

include the interest from the date of the original judgment. 2 Dallas, 256. See *ibid.* 303.

See the rules for computing interest on a decree of reversal or affirmance in the Supreme Court of the *United States.* 3 Dallas, 88-103. 338. 356.

The rule for computing interest on a judgment given as a security for what might be recovered on a trial, 3 Dallas, 506.

## CHAPTER XLIX.

*An ACT for the better regulation of servants in this province and territories.*

No servant to be sold out of this government, without his consent,

FOR the just encouragement of servants in the discharge of their duty, and the prevention of their deserting their masters or owners service, *Be it enacted,* That no servant, bound to serve his or her time in this province, or counties annexed, shall be sold or disposed of to any person residing in any other province or government, without the consent of the said servant, and two justices of the peace of the county wherein he lives or is sold, under the penalty of ten pounds; to be forfeited by the seller.

Nor assigned over, except before a justice.

II. *And be it further enacted,* That no servant shall be assigned over to another person by any in this province or territories, but in the presence of one Justice of Peace, of the county, under the penalty of ten pounds; which penalty, with all others in this act expressed, shall be levied by distress and sale of goods of the party offending.

Servants dues.

III. *And be it enacted,* That every servant that shall faithfully serve four years, or more, shall, at the expiration of their servitude, have a discharge, and shall be duly clothed with two complete suits of apparel, whereof one shall be new, and shall also be furnished with one new axe, one grubbing-hoe, and one weeding-hoe, at the charge of their master or mistress.

Penalty on servants running away.

IV. *And for prevention of servants quitting their masters service, Be it enacted,* That if any servant shall absent him or herself from the service of their master or owner for the space of one day or more, without leave first obtained for the same, every such servant shall, for every such day's absence, be obliged to serve five days, after the expiration of his or her time, and shall further make such satisfaction to his or her master or owner, for the damages and charges sustained by such absence, as the respective County Court shall see meet, who shall order as well the time to be served, as other recompence for damages sustained.

The reward for taking them up.

V. *And whosoever shall apprehend or take up any runaway servant, and shall bring him or her to the Sheriff of the county, such person shall, for every such servant, if taken up within ten miles of the servant's abode, receive ten shillings, and if ten miles or upwards, twenty shillings reward, of the said Sheriff, who is hereby required to pay the same, and forthwith to send notice to the master or owner,*

of whom he shall receive five shillings, prison fees, upon delivery of the said servant, together with all other disbursements and reasonable charges for and upon the same. 1700.

VI. And to prevent the clandestine employing of other men's servants, *Be it enacted*, That whosoever shall conceal any servant of this province or territories, or entertain him or her twenty-four hours, without his or her master's or owner's knowledge and consent, and shall not within the said time give an account thereof to some Justice of the Peace of the county, every such person shall forfeit twenty shillings for every day's concealment. And in case the said Justice shall not, within twenty-four hours after complaint made to him, issue his warrant, directed to the next constable, for apprehending and seizing the said servant, and commit him or her to the custody of the Sheriff of the county, such Justice shall, for every such offence, forfeit five pounds. And the Sheriff shall by the first opportunity, after he has received the said servant, send notice thereof to his or her master or owner; and the said Sheriff, neglecting or omitting in any case to give notice to the master or owner of their servant being in his custody as aforesaid, shall forfeit five shillings for every day's neglect after an opportunity has offered, to be proved against him before the next county court, and to be there adjudged.

Penalty for  
concealing  
them.

Justice's duty,  
and fine  
on neglect.

Also, the  
Sheriff's.

VII. And for the more effectual discouragement of servants imbezling their masters or owners goods, *Be it enacted*, That whosoever shall clandestinely deal or traffick with any servant, white or black, for any kind of goods or merchandize, without leave or order from his or her master or owner, plainly signified or appearing, shall forfeit treble the value of such goods to the owner; and the servant, if a white, shall make satisfaction to his or her master or owner by servitude, after the expiration of his or her time, to double the value of the said goods: And if the servant be a black, he or she shall be severely whipped, in the most public place of the township where the offence was committed.

Clandestine  
dealing with  
servants.

Passed in 1700.—Recorded A. vol. I. page 38. (g.)

(g.) The supplement to this act passed March 9th, 1771, (post. chap. 625) recites, that no clear and express authority is given to the Court by the original act to order and enforce the delivery and payment of freedom dues to the said servants, at the expiration of their servitude, and such servants are left to their remedy by action of covenant, &c. and provides, that the Justices in the Court of Quarter Sessions, on complaint made, by petition, by any servant, who shall have served out his or her time, that his or her last master or mistress, their executors or administrators, have not furnished him or her with freedom dues, and performed the covenants in his or her indenture mentioned, to cause the said master, &c. to come before them, and, after hearing, &c. if it shall appear just and reasonable, to adjudge, order and direct delivery or payment of such freedom dues, sums of money, or

other things, as shall be justly due to the said servant, at the expiration of his or her servitude, according to law, and the covenants in his or her indentures mentioned; and on neglect or refusal of the master, &c. to comply with such order, in such time as the Justices shall appoint, to adjudge the value of the freedom dues, and give judgment, and award execution, with reasonable costs of suit, to be levied by any constable accordingly. And if the petitioner shall be found to have no just cause of complaint, he or she shall pay all cost, to be recovered and levied in manner aforesaid.

The second section obviates a doubt whether the Court of Quarter Sessions, could, after the expiration of the term of servitude, make an order to compel a runaway servant to serve a further period, in satisfaction of the injury done to the master or mistress; and enacts, that



1700. if any person, being a servant, shall absent him or herself from the service of his or her master, &c. without leave first obtained, the Court of Quarter Sessions, on application of the master, &c. whether before or after the expiration of such person's time of servitude, shall oblige such person to make a full recompence for the damages and charges the said Court shall adjudge to be sustained by such absence, either by serving five days for every day he or she was so absent, or by such other reasonable satisfaction, as to the Justices shall seem meet.

The last section repeals so much of the third section of the original act, as relates to servants having a new grubbing hoe, an axe, and a weeding hoe.

By the third section of an act entitled "A supplementary act to a law of this province, entitled an act that no public house or inn, within this province, be kept without licence," it is enacted "that if any inn-holder, &c. shall receive, harbour, entertain or trust any minor under the age of twenty-one years, or any servant, knowing them to be such, or after having been cautioned or warned to the contrary by the parent, guardian, master or mistress of such minor or servant, in the presence of one or more credible witness or witnesses, such inn-holder, &c. so offending, shall, for the first or second offence, being duly convicted thereof, forfeit and pay the sum of twenty shillings for every such offence, over and above the loss and forfeiture of any debt such minor or servant shall or may contract for liquors or entertainment. And for the third offence, his licence to be declared null and void, to forfeit and pay the sum of five pounds, and be for ever after incapable of keeping a public house," &c.

Passed August 26th, 1721, (post. chap. 244.)

By the seventh and ninth sections of the act for the gradual abolition of slavery, passed March 1st, 1780, (post. chap. 870,) the offences and crimes of negroes and mulattoes, as well slaves as free-men, shall be tried and punished as in the case of other inhabitants, except that a slave shall not bear witness against a freeman. And the reward for taking them up when they abscond, and the penalties for enticing them away, dealing with, or harbouring them shall be the same as in the case of servants bound for four years; which repeals, of course, the last sentence, or clause of the act in the text.

See the act of 1st March, 1780, above mentioned; and a supplement passed 29th March, 1788, (post. chap. 1334,) respecting negro servants generally.

And for the laws respecting German emigrants, indentured, to pay their passage, &c. see the acts of April 8th, 1785, (post. chap. 1156,) and the act of March 19th, 1810, which obliges the master or mistress of German redemptioners, who are minors, arriving at Philadelphia after the passing of that act, to give such redemptioner six weeks schooling for every year of his or her term of servitude—which duty shall be inserted in the indentures, by the Register of German passengers.

By the 18th section of the act for the relief of the poor, passed March 9th, 1771, (post. chap. 635,) indentured servants legally and directly imported from Europe, shall obtain a legal settlement in the city, borough, township or place, in which such servant shall first serve with his or her master or mistress, for the space of sixty days, and if afterwards such servant shall duly serve in any other place, for the space of twelve months, such servant shall obtain a legal settlement where such service was last performed, either with his or her first master or mistress, or on an assignment.

The same provision is incorporated in the 17th section of the act for the consolidation and amendment of the laws, as far as they respect the poor of the city of Philadelphia, the district of Southwark, and the township of the Northern Liberties, passed March 29th, 1803, (post. chap. 2357.)

It has been decided in the Supreme Court (MSS. Reports) that free negroes and mulattoes can be bound in this state as servants, only until 21 years of age: but those who have been bound in other states may be compellable to serve until 28 years old, according to the terms of their indentures. But to constitute an indenture of servitude, express words, binding the servant, *as such*, to the master, are necessary.

A guardian cannot bind out his ward as a servant, nor can a parent, for money paid to himself.

This was settled in the case of the *Commonwealth v. Keppeler*, 2 Dallas, 197, in which the Court unanimously held such an indenture to be void, and not supported by the act in the text; that an indenture, by which an infant is bound to serve, and not to learn any trade, occupation, or labour, cannot be supported upon the principles of the common law, nor by the express words of any statute—and so far as servitude depended upon the custom of the country, that custom extended to imported servants only, which was founded on necessity, and extended to all such as were



imported, whether minors or adults, and was thought to be mutually beneficial to the colony, and to the emigrant. But no such necessity existed as to the children who were already in the province, and the custom never extended to them. The overseers of the poor have no authority to bind out minors as *servants*, even such as are the objects of public charity. They must be bound apprentices to some "art, trade, occupation or labour." No parent, under any circumstances, can make his child a *servant*. Though he is entitled to the service of his child, he cannot enforce it, as a master can that of his servants; he cannot commit him to gaol if he runs away; he cannot demand the penalty of five days service, for every day of absence; and therefore it is impossible that he can transfer such right to another.

For the law respecting apprentices, see the 12th section of the act establishing the Orphans' Court, passed in 1713, (post chap. 197.) The act for regulat-

ing apprentices within this province, passed 29th Sept. 1770, (post. chap. 616.) The 8th section of the act for the relief of the poor, before cited. The supplement to the act of Sept. 1770, passed April 11th, 1799, (post. chap. 2074.) The different local acts for establishing poor-houses—and the 2d section of the act of April 2d, 1803, (post. chap. 237,) for the confinement of runaway and disorderly apprentices in Philadelphia.

By the 7th section of the act against adultery and fornication, passed in 1705, (post. chap. 122,) if any single woman, being a servant by indenture or covenant, have a bastard child within the time of her servitude, she shall serve such further time, beyond the term in her indenture or covenant mentioned, as the Sessions shall think fit, as a compensation to her master or mistress, for the loss and damage they had sustained by reason thereof; *provided*, it be not more than two years, nor less than one.

## CHAPTER LVI.

### *An ACT for regulating and maintaining of fences.*

**FOR** preventing all disputes and differences that may arise through the neglect or insufficiency of fences in this province, and counties annexed, *Be it enacted*, That all corn-fields and grounds kept for inclosures, within the said province and counties annexed, shall be well fenced with fence, at least five feet high, of sufficient rail or logs, and close at the bottom; and whosoever, not having their grounds enclosed with such sufficient fence as aforesaid, shall hurt, kill or do damage to any horse, kine, sheep, hogs or goats, of any other persons, by hunting or driving them out of or from the said grounds, shall be liable to make good all damages sustained thereby to the owner of the said cattle. *Provided*, That all sorts of swine going at large, contrary to the intent of an act made and passed this present session, entitled, "An act for restraining of swine from running at large," shall not fall nor be deemed within the construction of this act. But if any horse, kine, sheep, hogs or goats, or any kind of cattle, shall break into any man's inclosure, the fence being of the aforesaid height and sufficiency, and by the view of two persons, for that purpose appointed by the County Court, found and approved to be such, then the owner of such cattle shall be liable to make good all damages to the owner of the inclosure; for the first offence single damages only, and ever after double the damages sustained. And all persons having any unruly horses, mares, or cattle, that are not to be kept off by such fences as aforesaid, are ordered, and shall be obliged to take effectual care to restrain the same from trespassing on their neighbours inclosures.

How fences shall be made.

Swine running at large not within this act.

Damages to be paid for trespasses.



1700.

Division  
fences how  
to be main-  
tained.

Differences  
about parti-  
tion fences  
how to be  
settled.

II. And for the better ascertaining and regulating of partition fences, *Be it further enacted*, That where any neighbours shall improve lands adjacent to each other, or where any person shall inclose any land adjoining to another's land already fenced in, so that any part of the first person's fence becomes the partition fence between them, in both these cases the charge of such division fence (so far as inclosed on both sides) shall be equally borne and maintained by both parties. To which end, and the others in this act mentioned, each County Court within this province shall nominate, and is hereby empowered and required to nominate and appoint, so many honest and able men as they shall think fit, for each county respectively, to view all such fence and fences, about which any difference may happen or arise; and that the aforesaid persons, in each county respectively, shall be the sole judges of the charge to be borne by the delinquent, or by both or either party, and of the sufficiency of all fences, whether partition fences or others; and where they judge any fence to be insufficient, they shall give notice thereof to the owners or possessors; and if any one of the said owners or possessors, upon the request of the other, and due notice given by the said viewers, shall refuse to make or repair the said fence or fences, or to pay the moiety of the charge of any fence before made, being a division fence, within ten days after notice given, that then, upon proof thereof before two Justices of the Peace of the respective county, it shall be lawful for the said Justices to order the person aggrieved and suffering thereby to repair the said fence or fences, who shall be reimbursed his cost and charges, from the person so refusing to make good the said partition fence or fences; and that the said costs and charges shall be levied upon the offender's goods and chattels, by warrant from the said Justice, by distress and sale thereof, the overplus, if any be, to be returned to the party offending.

Passed in 1700.—Recorded A. vol. 1. p. 51. (h)

(h) By the act for regulating party walls, buildings and partition fences in the city of *Philadelphia*, passed February 24th, 1721, (post. chap. 242,) particular provision is made for the regulation of partition fences, and for recovering the costs of erecting and repairing them in the city: which act is amended and rendered effectual, by the act of 15th April, 1782, (post. chap. 971,) and by the 9th section of the act for the better regulation of the city of *Philadelphia*, and districts adjoining, and preserving the navigation of the river *Schuylkill*, passed March 25th, 1805, (post. chap. 2569,) if any person shall erect or make any fence, beyond the common low water mark into the said river, without licence from the wardens, being legally convicted thereof, he, she, or they, for every such offence, shall forfeit and pay a fine not exceeding 20 dollars, &c.

By the 6th section of the act for "erecting of pounds in each township

of this province," passed May 10th, 1729, (post. chap. 301,) All fences shall be esteemed lawful or sufficient, though they be not close at the bottom, so that the distance from the ground to the bottom thereof exceed not 9 inches, and that they be four feet and an half high, and not under. And by the act of March 4th, 1763, (post. chap. 490,) entitled "An act concerning cattle, horses and sheep trespassing within this province," it is provided, that if any stray horse, mare, colt, cattle or sheep, shall trespass into any inclosure made according to the act of May 10th, 1729, the same may be seized and distrained, and the proceedings thereon are regulated.

These acts of May 10th, 1729, and March 4th, 1763, were repealed by the act of March, 27th, 1784, (post. chap. 1078,) entitled "An act to regulate fences, and to appoint appraisers in each township in the counties of Bedford, Northumberland, Westmoreland,



Washington and Fayette, and to encourage the raising of swine," so far as respected the counties named in the title; and it is enacted that all fences within the limits of the said counties, shall be made and erected in the following manner: All worm fences shall be four feet and an half high, with sufficient stakes and riders added thereon, and that the under rail in each pannel shall not exceed five inches wide between the rails, and that the said fences shall have at least four feet worm; and that all post and rail fences shall be four feet and an half high, and the distance between the rails as aforesaid; and appraisers are to be elected annually in each township, to view and appraise the damages done by "the trespassing of swine or any other creature or creatures," and the mode of proceeding in such case is directed and regulated. The said appraisers are to view all partition fences, &c. This act, therefore, as far as it extends, supersedes the power of the court to appoint viewers of fences.

But, by an act passed March 7th, 1800, (post. chap. 2109,) the act of 27th March, 1784, is repealed so far as it respects the county of *Northumberland*, agreeably to the (then) limits of the said county; and by the act of April 1st, 1805, (post. chap. 2578,) so far as respects the county of *Luzerne*. By the operation of which repealing acts, the power of the courts to appoint viewers, and the two acts of May 10th, 1729, and March 4th, 1763, are revived in the counties of *Northumberland* and *Luzerne*.

The act of March 28th, 1808, (post. chap. 2981,) also repeals the act of March 27th, 1784, (except the repealing clause) so far as respects the counties of *Washington* and *Allegheny*. And it is provided therein, "That all fences shall be deemed lawful which are four and an half feet high (in said counties) if in the judgment of the referees (to be appointed, &c. as is directed in the act,) the fence or fences viewed by them, shall be such, in other respects, as are generally constructed, and deemed a sufficient fence within their respective township; and damages occasioned by horses, horned cattle or swine, trespassing in the said counties, are to be determined by the said referees, upon actual view, and recovered as is directed in the act.

By the provisions of this act (of 1808,) and by the operation of the exception in the repealing clause, the acts of 1729 and 1763, are not in force in these two counties. But as no provision is made for the regulation of partition fences, it would seem that recourse can be had,

in disputes respecting them, only to the act in the text.

By the act concerning strays, passed April 13th, 1807, (post. chap. 2865,) the acts of May 10th, 1729, and March 4th, 1763, are also repealed, so far as respects the counties of *Philadelphia*, *Bucks*, *Chester*, *Lancaster*, *Northampton*, *Wayne*, and *Delaware*. And, by an act passed, March 20th, 1810, so far as respects the counties of *Montgomery* and *York*; and new regulations are made for ascertaining and recovering damages done by trespassing cattle, horses or sheep.

The result of these various acts, seems to be, that the fences in the counties of *Philadelphia*, *Bucks*, *Chester*, *Lancaster*, *Northampton*, *Wayne*, *Delaware*, *Montgomery*, and *York*, are subject to the provisions of the act in the text: and the remedy for trespassing cattle, &c. is under the act concerning strays of April 13th, 1807—The acts of May 10th, 1729, and March 4th, 1763, being no longer in force in those counties.

The fences in the counties of *Berks*, *Dauphin*, *Cumberland*, *Franklin*, *Adams*, *Mifflin*, *Northumberland*, and *Luzerne*, are to be made according to the sixth section of the act of 10th May, 1729. And, the act concerning strays not extending to these counties, damages by trespassing cattle, &c. are to be compensated by the acts of 1729 and 1763; and partition fences regulated under the act in the text.

The remaining part of the state was, on the 27th March, 1784, included in the counties named in the act of that date, and all fences, and trespasses, must be regulated and compensated by that act, except in the counties of *Washington* and *Allegheny*, which are governed by the local regulations prescribed in the act of March 28th, 1808, except as to partition fences, as above stated.

It also appears that all that follows the *proviso* in the first section of the act in the text, is altered by the existing acts relative to trespasses by cattle, &c. above cited. And the act for restraining of swine from running at large, referred to in the *proviso*, (chap. 77,) was repealed by vote of Assembly, October 17th, 1701. See Votes of Assembly, vol. 1, page 159. For the existing laws respecting swine, see post. chap. 153 and 303, and the notes thereto.

The act to improve the breed of horses, and regulate rangers, passed May 9th, 1724, (chap. 279,) a supplement thereto, passed Dec. 9th, 1719, (chap. 1467,) and a further supplement passed April 22d, 1794, (chap. 1763,) were repealed by an act passed March 20th, 1810,



1700. By a supplement to the act in the text, passed March 20th, 1810, it is enacted, that any three of the fence viewers appointed by the different Courts of Common Pleas, in the several counties of this Commonwealth, shall be a *quorum* for doing business; and any view or order which they may make in pursuance of, or in discharge of the duties enjoined on them in the original act, shall be as firm and valid in law, as if

the whole number appointed in any of the counties aforesaid, had viewed or adjudged the same, according to the true intent and meaning of the said act. And each viewer shall receive one dollar for every day on which he shall be engaged in any view, which cost or expense shall be borne by both, or either parties, as the said viewers shall direct, according to the provisions of the original act.

## CHAPTER LXX.

### *An ACT concerning bills of exchange. (i)*

Twenty per cent. on protested bills of exchange.

*BE it enacted*, That if any person or persons, within this province and territories, shall draw or indorse any bill or bills of exchange, upon any person or persons in England, or other parts of Europe, and the same be returned back unpaid, with a legal protest, the drawer thereof, and all others concerned, shall pay and discharge the contents of the said bill or bills, together with twenty pounds per cent. advance, for the damage thereof; and so proportionable for greater or less sums, in the same specie as the said bill or bills were drawn, or current money of this province, equivalent to that was first paid to the drawer or indorser.

Passed in 1700.—Recorded A. vol. I. page 64.

(i) A bill of exchange protested for *non-acceptance*, on which the drawer pays principal and damages, he cannot afterwards recover back the damages, because there was not, likewise, a protest for *non-payment*. *Morris v. Tarin*: 1 Dallas, 147. Query, whether a protest for non-acceptance only, is sufficient to recover the money from the drawer? *Ibid.*

The court will allow the plaintiff in an action upon a bill of exchange to strike out a special, as well as a general, indorsement on the bill. *Morris v. Foreman*: 1 Dallas, 193. A protest for non-payment must appear under a notarial seal; but it is not necessary that the non-acceptance should be certified in the protest; for, that may be sufficiently established by other evidence. *Ibid.* The possession of a bill of exchange is evidence of an authority to demand payment of its contents. *Ibid.* Unless a bill of exchange is in its origin expressly made payable to order, an indorsement, subsequent to the acceptance, cannot vary or enlarge the engagement of the acceptor, so as to subject him, by the law merchant, to an action at the suit of the indorsee. *Gerard v. La Coste, et al.* 1 Dallas, 194.

Where a bill is neither paid nor received, in satisfaction of a precedent

debt, but upon the condition of its being honoured, if the bill is not honoured, but protested, the parties are in the same situation, as if it had never been drawn; and the plaintiff cannot be entitled to recover damages. *Chapman v. Steinmetz*: 1 Dallas, 261.

Reasonable notice of protest is to be given in the case of a bill of exchange. *Steinmetz et al. v. Currie*: 1 Dallas, 234, 270. And, also, in the case of a promissory note. *Robertson et al. v. Vogle*: *ibid.* (Note to former edition.)

See, *Bank of North America v. Vardon*, 2 Dallas, 78. And in a suit against an indorser of a promissory note, the Chief Justice said, before the revolution, it was not usual to give notice to the indorser, or even to call on the drawer, as soon as a note became due; it would have been considered as harsh and unreasonable. But since the establishment of a bank, a rule has been introduced; and as these notes, lodged in the bank, were often accommodation notes, it was highly reasonable notice should be given in a short time. What that time ought to be, has not been determined. Two or three months would certainly be too long, and a day may be too short. It was therefore left to the jury, with a direction to take into consideration the usual practice of that



time. In this case notice had been given to the drawer, on the day the note became due, and to the indorser four or five days after. The jury found a verdict for the plaintiff. *Bank of North America v. McKnight*, 2 Dallas, 158, and see 4 Dallas, 109, what circumstances will be considered a waiver of notice. And in the *Bank of North America v. Pettit*, *ibid.* 129, the Court said, that the punctuality and other beneficial consequences, flowing from the rules adopted by the Bank, seem to have given them a more general operation and force; so as to constitute a general usage, and not merely a usage of the Bank. But notwithstanding the necessity of giving notice exists, on general principles, as well as upon the usage, its reasonableness still depends, here, on the verdict of a jury. As soon as we can, consistently with the state of the country, its roads, and its posts, it will be wise to adopt the *English* law upon the subject, for the sake of certainty and uniformity in the administration of justice; and, perhaps, (such is the rapid progress of population and public improvement) the Court may, in future, incline to adopt it. And in the same book, pa. 165, it is still said, that what constitutes due notice, is a point to be settled. It has hitherto been regarded as a matter of fact, to be decided by a jury, under all the circumstances of each case, as it arises. The jury will, however, always be governed by a sound and reasonable discretion. They will allow but a short time for giving notice, where the parties reside in the same town; six weeks, in such a case, would be too long; and for giving notice in different parts of the country, they will bring into the calculation of a reasonable time, the facility of the post, the state of the roads, and the dispersion of the inhabitants, in relation to the post towns.

Where bills of exchange shall be deemed payment, and where not, see 2 Dallas, 100, 101, 135, 136.

Though only one satisfaction can be recovered, execution may issue for costs in all the actions brought against the several parties to a promissory note. 2 Dallas, 117.

The acceptor of a bill of exchange is only liable to the last indorsee; for all the prior indorsers have parted with their interest in it, are presumed to have received a valuable consideration for it, and can therefore have no right to the money a second time. But if the last indorsee protests the bill for non-payment, and afterwards receives back the money from a prior indorser, such indorser acquires a *new title*, to receive

the money from the acceptor, by such payment. Therefore in an action by the first indorser (the payee) against the acceptor of a bill of exchange, which had been several times indorsed, the mere possession of the bill and protest, is not sufficient evidence that the plaintiff had paid the subsequent indorsee, which must be proved, to entitle him to recover: for he may have come into possession of the bill, by finding, bailment for a special purpose, or by fraud. *Gorgerat et al. v. McCarty*. 2 Dallas, 144.

And in the same case it was held, that among bills payable to order, there is a distinction between those which are specially indorsed, and those which are indorsed in blank. Possession of the latter is evidence of title; but bills specially indorsed do not pass by delivery, and therefore possession does not prove property in them. And the case of *Morris v. Foreman*, 1 Dallas, 193, (cited in the note to the former edition) is more fully reported and explained. This latter point has also been decided in the Circuit Court of the United States, for the *Pennsylvania* district; in *Wilkinson et al. v. Nicklin et al.* 2 Dallas, 397, in which it is said by the Court, that there is no rule more perfectly established, none which ought to be held more sacred in commercial transactions, than that the blank indorsement of a bill of exchange passes all the interest in the bill, to every indorsee, in succession, discharged from every obligation, which might subsist between the original parties, but which does not appear upon the face of the instrument itself. See 4 Dallas, 61.

An action cannot be maintained in the name of an indorsee, upon a promissory note not payable to order; and judgment was arrested, after interlocutory judgment, which had been signed, for want of a plea, and a writ of inquiry issued and returned. *Barriere v. Nairac*, 2 Dallas, 249. See 1 Dallas, 194.

Promissory notes are not entitled to the same priority of payment as bills of exchange, in a course of administration, under the provision in the 13th section of the act incorporating the Bank of *Pennsylvania*; the act only applies to the case of defalcation. 2 Dallas, 263.

If a man accepts a forged bill, or draft, he is not only conscientiously, but legally bound to pay it. *United States v. the Bank of the United States*. Circuit Court U. S. October 1860. *Philadelphia*. 4 Dallas, 235, (note.)

Not on the principle that his acceptance has given a credit to the bill, but because it is his duty to know the drawer's hand writing, which he is precluded



1700. from disputing by his acceptance. *Levy v. Bank of United States*. 1 Binney, 36. S. C. 4 Dallas, 234.

An alteration of the date of a promissory note by payee, whereby the time of payment is *retarded*, which is afterwards discounted with innocent persons by the payee, on indorsing it, avoids the note. MSS. Reports, Sup. Court.

In an action on a bill of exchange protested for non-payment, the plaintiff need not aver, nor produce, a protest for non-acceptance. *Brown v. Barry*. Sup. Court U. S. 3 Dallas, 368. And *Clarke v. Russel*. Ibid. 424.

And a suit may be brought against the drawer of a bill of exchange for non-acceptance, before it becomes payable. But 20 per cent. damages are not recoverable in *Pennsylvania*, on bills of exchange protested for non-acceptance—but interest only from notice of the protest. MSS. Reports, Sup. Court. *Semb*. 2 Dallas, 135. The current rate of exchange at the time of trial must determine the sum to be recovered. If there is no such rate it must be fixed at *par*. MSS. *ibid*.

If a foreign bill of exchange is remitted at the risk of the debtor here, he is entitled to the 20 per cent. damages, and not the foreign creditor. In point of justice it is but fair to allow every incidental, or casual, profit and emolument, to the party who is exposed to all the hazard and inconvenience of remittance. 4 Dallas, 157.

A bill of exchange lost, and an indorsement forged thereon, and the money paid by the acceptors (who were of the same house with the drawers) the real payee shall recover the money. And there may be a recovery against the acceptor, on a bill of exchange lost, or mislaid. MSS. Reports, Sup. Court.

If a bill of exchange be drawn in favour of a fictitious payee, and that circumstance be known, as well to the acceptor as the drawer, and the name of such payee be indorsed on the bill; an innocent indorsee, for a valuable consideration, may recover on it against the acceptor, as on a bill payable to *bearer*. MSS. Reports, Sup. Court.

It is a settled principle, that judgment cannot be rendered for a plaintiff, unless a cause of action appears on the

face of his declaration. If it appears in substance, the Court, after verdict, will support it, though defectively set forth; because it will be presumed the deficient matters were proved on the trial; but a verdict will not mend the matter, where the *gist* of the case is not laid in the declaration, though it will cure ambiguity. The want of an *express* promise might be dispensed with, provided enough was stated to raise a promise by implication of law. But the drawer of a bill of exchange is not liable, unless he receives notice of the non-payment of the acceptor, and such notice must be alleged in the declaration; an allegation in the declaration, that the drawer became liable by the *custom of merchants*, is not sufficient; because the law merchant is not a matter of *fact*, but of *law*. *Miles*, in error, *v. O'Hara*. High Court of Errors and Appeals. July 1807 MSS. Reports.

What is reasonable time of notice to be given to the indorser of a note, of its being dishonoured, is now settled to be matter of law. In cases of the Banks, they must give notice in 6 or 7 days.

Where a promissory note has been indorsed, after it became due, it amounts to an original undertaking, as a note merely drawn by the indorser. MSS. Reports, Sup. Court.

The indorser, the original payee, who had become a bankrupt, is not a witness to prove the want of consideration, in an action by the indorsee against the drawer. 2 Dallas, 194.

See the act to devise a particular form of promissory note, not liable to any plea of defalcation or sett-off, passed Feb'y 27th, 1797, (post. chap. 1909.)

This act extends only to the city and county of Philadelphia.

Bills of exchange and promissory notes, payable to order in the city of *Philadelphia*, are properly negotiable paper, after such notes have been indorsed *bona fide* in the course of trade. The effect is, that the holder may sue in his own name, and may recover the money from the drawer, without any embarrassment whatever on account of any counter demands, or want of consideration as between the drawer or maker, and the payee. 1 Binney, 433, (in the note.)

## CHAPTER LXXIII.

*An ACT for regulating weights and measures. (k)*

Standards of  
weights and  
measures to

*BE it enacted*, That in each county of this province and territories there shall be had and obtained, within two years after the

(k) This act, except the last section, is confirmed post. chap. 138; and by an act passed on the 19th of January, 1733-34, (post. chap. 332,) millers, bolters and



making of this law, at the charge of each county, to be paid out of 1700. the county levies, standards of brass, for weights and measures, according to the King's standards for the exchequer; which standards shall remain with such officer in the counties aforesaid, as shall be from time to time appointed by the Governor, with the advice of the Council: And every weight, according to its scantling, and every measure, as bushels, half-bushels, pecks, gallons, pottles, quarts and pints, shall be made just weights and measures, and marked by him that shall keep the standards. And that no person within this province and territories shall presume to buy or sell by any weights or measures, not sealed or marked in form aforesaid, and made just according to the standards aforesaid, by the officers in whose possession the standards remain, on penalty of forfeiting five shillings to the prosecutor, being convicted by one Justice of the Peace of the unjustness of his weights or measures. And that once a year at least, the said officer, with the Grand Jury, or the major part of them, and for want of the Grand Jury, with such as shall be allowed and appointed by the respective County Courts aforesaid for assistants, shall try the weights and measures in the counties aforesaid; and those weights and measures as are defective to be seized by the said officer and assistants: Which said officer, for his fees, for making each bushel, half-bushel and peck just measure, and marking the same that is large enough when brought to his hands, shall have ten-pence; and for every lesser measure, three-pence; for every yard, three-pence; for every hundred and half-hundred weight, being made just and marked, three-pence; for every lesser weight, one penny. And if the weights and measures be made just before they be brought to him, then to have but half the fees aforesaid for marking the same. And if the said officer shall refuse to do any thing that is enjoined by this law, for the fees appointed, and be duly convicted thereof, [he] shall forfeit five pounds, to the use of the Proprietary and Governor.\*

be kept in each county.

All weights and measures to be sealed, and tried once a year.

The officer's fees.

The penalty on misbehaviour.

II. *Provided always, and it is hereby enacted*, That the brass half-bushel, now in the town of Philadelphia, and a bushel and peck proportionable, and all lesser measures and weights coming from England, being duly sealed in London, or other measures agreeable

bakers were required to bring their weights and measures, once in three years, to the standard kept in each county, according to the direction of the law in the text: [but that act was repealed on the 5th April, 1781, (post. chap. 925.)]

It appears by the records of the executive department, that the late Supreme Executive Council, proposed two questions on this act for the opinion of the Attorney-General (Mr. Bradford.) "1st. In whom the appointment of the officer therein mentioned is now vested? and 2d, Whether the Mayor or Corporation of Philadelphia have a right to appoint such an officer for the city, in exclusion of that appointed by the county?" The opinion of the Attorney-Ge-

neral, dated the 14th of October, 1790, in answer to the first question, states, "that previously to the revolution the power of appointment was clearly in the Governor; and, by the laws and constitution of the state, may now be exercised by the President and Council." And, in answer to the second question, it states, "that the Mayor and Corporation have not any such power of appointment." However, as it seemed doubtful whether there is now in existence any such standards as are directed by the act to be procured, and as the original standard is now kept in a foreign kingdom, a revision of the act was suggested by the Governor to the Legislature, in his address of the 28th day of December, 1790, unless there should

\* The word [he] is not contained in the original roll, though inserted in the former edition. (Note to former edition.)



1700. therewith, shall be accounted and allowed to be good by the aforesaid officer, until the said standards shall be had and obtained.

III. *And be it further enacted*, That no person shall sell beer or ale by retail, but by beer measure, according to the standard of England. (1)

Passed in 1700.—Recorded A. vol. I. page 65.

speedily be made by the Federal Government some general and permanent provision, which would supersede the necessity of any state regulations. As the constitution of the United States, (art. I. sect. 8,) vests in Congress the

power of fixing the standard of weights and measures, and as a general regulation is contemplated by that body, the Legislature of Pennsylvania has not hitherto interposed on the subject. (Note to former edition.)

(1) By an act passed in 1705, (post. chap. 138) any person licensed to keep any tavern, inn, alehouse, or victualling house, shall sell beer and ale by wine measure, to all persons who drink it in

their houses, and by beer measure to all such persons as carry the same out of their houses, under the penalty of ten shillings, &c. and this act is confirmed, except the third section.

## CHAPTER LXXV.

*An ACT for keeping a registry in religious societies.*

Registries of religious societies to be evidence.

*BE it enacted*, That the registry now kept, or which shall hereafter be kept by any religious society, in their respective meeting-book or books, of any marriage, birth or burial, within this province, or territories thereof, shall be held good and authentic, and shall be allowed of upon all occasions whatsoever.

Passed in 1700.—Recorded A. vol. I. page 67. (m)

(m) Copy of the register of births and deaths of the people called Quakers, in England, proved to be a true one before the Lord Mayor of London, allowed to be given in evidence to prove the death of a person. *Lessee of Hyam et al. v. Edwards.* 1 Dallas, 2.

*Ex parte affidavit* made in England, is evidence of pedigree. So, a leaf extracted from a family bible, containing entries of births and deaths of children, sworn to by some of the children, is good evidence. 2 Dallas, 116.

An *ex parte affidavit* is good evidence to prove the identity of a person, so far as it respects his marriage or pedigree. MSS. Reports, Sup. Court.

Recitals in a conveyance from divers persons said to be the children of C. Sparks, (who had entered an application) to the lessor of the plaintiff, for the lands in question, held to be evidence of the pedigree. *Lessee of Paxton v. Price.* Bedford, April 1795. MSS. *Nisi Prius Reports.*

## CHAPTER LXXXI.

*An ACT about cutting timber-trees.*

Penalty on cutting or felling trees.

*BE it enacted*, That if any person or persons, within this province or territories, shall be convicted of cutting or felling any black walnut-trees upon another person's land, without leave, he shall forfeit, to the owner thereof, five pounds for every tree so felled and cut; and for other timber fifty shillings each tree; and for fire or under-wood, double the value thereof, to the use aforesaid.

Passed in 1700.—Recorded A. vol. I. page 71. (n)

(n) See the acts of March 1st, 1799, and March 20th, 1810, and the first part of the note to chap. 11, ante pa. 1, and the act against removing land-marks,

chap. 15, ante pa. 4, and the act to prevent the damages which may happen by firing of woods, passed April 18th, 1794, (post. chap. 1732.)

# ACTS

OF THE

## General Assembly of Pennsylvania,

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WILLIAM PENN, GOVERNOR.

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1701.

Laws passed at Philadelphia, at a Session begun and held  
Sept'r 15th, and ended Oct'r 28th, 1701.

### CHAPTER CIX.

*An ACT for the preventing of clandestine marriages.*

**FOR** the preventing of clandestine, loose, and unseemly proceedings in marriage, within this province and counties annexed, *Be it enacted*, That all marriages not forbidden by the law of God shall be encouraged; but the parents or guardians shall, if conveniently they can, be first consulted with, and the parties' clearness of all engagements signified by a certificate from some credible person where they have lived, or do live, produced to such religious society to which they relate, or to some Justice of the Peace of the county in which they live, and by their affixing their intentions of marriage on the Court-house or Meeting-house doors in each respective county where the parties do reside or dwell, one month before solemnization thereof; the which said publication, before it be so affixed as aforesaid, shall be brought before one or more Justices of the Peace, in the respective counties to which they respectively belong; which Justice shall subscribe the said publication, witnessing the time of such declaration, and date of the said publication, so to be affixed as aforesaid. And that all marriages shall be solemnized by taking each other for husband and wife, before twelve sufficient witnesses; and the certificate of their marriage, under the hands of the parties and witnesses, at least twelve, and one of them a Justice of the Peace, shall be brought to the Register of the county where they are married, and registered in his office. And if any servant or servants shall procure themselves to be married, without consent of his or her master or mistress, such servant or servants shall, for such their offence, each of them serve their respective masters or mistresses one whole year, after the time of their servitude by indenture or engagement is expired. And if any person, being free, shall marry

Consent of  
parents or  
guardians to  
be obtained,  
and publica-  
tion to be  
made before  
marriage.

Marriages  
before a Jus-  
tice of the  
Peace.

Servants not  
to marry  
without  
their mas-  
ter's consent.



1701. with a servant as aforesaid, he or she so marrying shall pay to the master or mistress of the servant, if a man, twelve pounds, and if a woman, six pounds, or one year's service; and the servant so being married shall abide with his or her master or mistress, according to indenture or agreement, and one year after as aforesaid. And if any person shall presume to marry, or be witnesses to any marriage, contrary to this act, such person, so married, shall forfeit twenty pounds to the Proprietary and Governor; and the witnesses being present at such marriage shall forfeit and pay each of them five pounds, to the use of the Proprietary and Governor as aforesaid, and pay damages to the party grieved, to be recovered in any Court of Record within this government.

Penalty on persons marrying contrary to this act.

Marriages in religious societies, &c. excepted.

II. *Provided*, That this law shall not extend to any who shall marry or be married in the religious society to which they belong, so as notice shall be given by either of the parties to the parents, masters, mistresses or guardians, one full month, at least, before any such marriage be solemnized.

III. *And it is further enacted*, That no licence or dispensation shall hinder or obstruct the force or operation of this act, in respect of notice to be given to parents, masters, mistresses or guardians as aforesaid.

Passed in 1700—Recorded A. vol. I. p. 123. (o)

(o) A supplement to the act entitled "An act for preventing clandestine marriages was passed February 14th, 1729-30, (post. chap. 311,) which imposes a penalty of £.50 on any justice, minister, or other person, who shall publish an intended marriage, solemnize any marriage, or subscribe as a witness thereto, contrary to the provisions of the act in the text; but an exception similar to that contained in the second section of this act, is, likewise there introduced.

*Ann Norris v. Revd. Joseph Pilmore.* Debt on the act of assembly for marrying *Robert Norris*, the son of the Plaintiff, one of the people called Friends, and under the age of twenty-one years, without the certificate, agreement or consent of the said *Ann*, who inhabited the county of *Philadelphia*, and without publication of Bans, to *Ann Armstrong*, contrary to the act of assembly, which gives £.50 penalty to the party grieved. At the time of the marriage, *R. Norris* was an apprentice. Verdict for plaintiff, with sixpence damages, and six-pence costs.

On the part of the plaintiff it was contended, that if a certain penalty be given to the party grieved, he shall also recover damages and costs. *Sayer*, Law of costs, 71-2, S. C. Cro. C. 559.—1 Roll. Abr. 574. *Hullock*, 17, 18, 19. S. C. 1 H. Black. 10.—The right of the party here does not commence with the ver-

dict, but by the offence, by which he is grieved.

On the part of the defendant it was argued, that as the master of the apprentice was the party grieved, or the mother, it was impossible for defendant to know which of them was entitled to the penalty, until the action was commenced, as in the case of a common informer.

By the court after consideration; this was an action of debt against a clergyman for marrying an apprentice, a lad of 18 years of age, without the consent of his parent or master. The act of assembly directs that a person so offending shall forfeit £.50 to be recovered in any court of record, by the person or persons grieved, if they will sue for the same. This action was brought by the mother of the lad, and the jury have found a verdict for the plaintiff, with sixpence damages, and sixpence costs. The counsel for defendant moved that judgment be entered for the debt without costs. The ground of the motion is, that the action was brought originally in the supreme court, and the act of assembly directing, that if plaintiff do not recover more than £.50 he shall not have costs. And the verdict here being for the precise sum of £.50 no costs will follow:—and although the jury have given sixpence damages, yet they contend that this was beyond the power of the jury to do in this action; damages

in an action of debt being given for the detention of the debt; but here no debt was due till the finding of the jury; so no detention. To this, it was answered, that there was a distinction between an action of debt brought by a *common informer*, and one brought by the *party grieved*. In the latter case, the debt incurs immediately upon the commission of the offence; so damages may be given for the detention. To which defendant's counsel replies, that by the words of the act of assembly, the master, as well as the parent may be the party grieved; that, therefore, there is the same uncertainty, as to the person entitled to the penalty, as in the case of a common informer. We have examined the several authorities in the books upon this point: In Roll. Abr. it is said, where a statute gives a certain penalty to a person grieved, the debt is due *upon the return of the summons*; and in Cro. C. it is said to be due *after demand*; but neither of these cases fully answers the objection, there being in these cases but one person who could be grieved; but we have looked into a case in 1 *H. Black.* 10, which has given us satisfaction upon the point. That was the case of an action of debt for the penalty of the *habeas corpus* act, by the party grieved against the gaol keeper, for refusing the plaintiff a copy of his warrant of commit-

ment. A verdict was given for the penalty, but without damages or costs. On motion that the prothonotary should tax the plaintiff's costs, and that one shilling nominal damages should be indorsed on the *postea*—The court said this was not a popular action, but that the right vests in the party grieved, as soon as the grievance was committed; but it is otherwise of a common informer, who has no interest till judgment. And, on turning to the *habeas corpus* act, on which the action was brought, we find that the penalty is given to the *prisoner or the party grieved*, in the disjunctive. So, we are of opinion the jury had a right to give the nominal damages, which carries the sum recovered beyond 50*£*. and plaintiff must have her costs.

*Mc. Kean, C. J.* not having been present at the argument of this case, said, after the delivery of this opinion by judge *Shippen*, that though he did not, for the above reason, deliver the opinion of the court, yet he heartily concurred in it. S. MSS. Reports, Supreme Court.

See the act against incest, containing a table of degrees of consanguinity and affinity, within which marriages are declared unlawful, passed in 1705, (post. chap. 121.)



# A C T S

OF THE

## General Assembly of Pennsylvania.

1700.

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JOHN EVANS,  
LIEUTENANT GOVERNOR.

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Laws passed at a Session begun and held, October 14th, 1705,  
and ended February 12th, 1706.

### CHAPTER CXV.

*The LAW concerning liberty of conscience. (p)*

Liberty of  
conscience,  
and of reli-  
gious wor-  
ship, to  
whom allow-  
ed.

**ALMIGHTY GOD** being only **LORD** of conscience, author of all divine knowledge, faith and worship, who can only enlighten the minds, and convince the understanding of people; in due reverence to his sovereignty over the souls of mankind; and the better to unite the Queen's christian subjects in interest and affection, *Be it enacted*, That no person now, or at any time hereafter, dwelling or residing within this province, who shall profess faith in **GOD** the Father, and in **JESUS CHRIST** his only Son, and in the **HOLY SPIRIT**, one **GOD** blessed for evermore, and shall acknowledge the holy Scriptures of the old and new testaments to be given by divine inspiration, and, when lawfully required, shall profess and declare that they will live peaceably under the civil government, shall, in any case, be molested or prejudiced for his or her conscientious persuasion, nor shall he or she be at any time compelled to frequent or maintain any religious worship-place or ministry whatsoever, contrary to his or her mind, but shall freely and fully enjoy his or her christian liberty in all respects, without molestation or interruption.

Passed in 1705.—Recorded A. vol. I. page 139.

(p) By the third section of the act for the advancement of justice, passed May 31, 1718, (post. chap. 236,) a solemn affirmation is declared to have the effect of an oath in all cases, criminal as well as civil; and by an act passed on the 21st of March, 1772, (post. chap. 660,) this operation is extended to an attesta-

tion; made in any form of oath, according to the conscientious persuasion of the party.

When the revolution was accomplished, the rights of conscience were asserted, among the fundamental principles of the constitution which was adopted on the 18th of September, 1776,



in the following emphatical language:  
 "That all men have a natural and unalienable right to worship Almighty God according to the dictates of their own consciences and understanding: And that no man ought, or of right can be, compelled to attend any religious worship, or erect or support any place of worship, or maintain any ministry, contrary to, or against his own free will and consent: nor can any man, who acknowledges the being of a God, be justly deprived or abridged of any civil right as a citizen, on account of his religious sentiments or peculiar mode of religious worship: And that no authority can or ought to be vested in, or assumed by any power whatever, that shall in any case interfere with, or in any manner control, the right of conscience in the free exercise of religious worship."

The existing constitution has adopted the same enlightened sentiment in nearly similar words: "That all men have a natural and indefeasible right to worship Almighty God according to the dictates of their own consciences; that no man can of right be compelled to attend, erect or support any place of worship, or to maintain any ministry, against his consent; that no human authority can, in any case whatever, control or interfere with the rights of conscience; and that no preference shall ever be given, by law, to any religious establishments, or modes of worship."

1705.

The 2d article of amendment to the Federal Constitution, likewise declares, that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." (*Note to former edition.*)

## CHAPTER CXIX.

*An ACT to restrain people from labour on the first day of the week.*

IV. *AND be it further enacted*, That no person or persons, upon the first day of the week, shall serve or execute, or cause to be served or executed, any writ, precept, warrant, order, judgment or decree, except in cases of treason, felony, or breach of the peace; but that the serving of any such writ, precept, warrant, order, judgment or decree, shall be void, to all intents and purposes whatsoever; and the person or persons so serving or executing the same, shall be as liable to the suit of the party grieved, and to answer damages to him for doing thereof, as if he or they had done the same without any writ, precept, warrant, order, judgment or decree at all.

No process to be served on Sunday, except for treason, felony, or breach of the peace.

V. *And be it further enacted*, That all persons who are found drinking and tippling in ale-houses, taverns, or other public house or place, on the first day of the week, commonly called Sunday, or any part thereof, shall, for every offence, forfeit and pay one shilling and sixpence, to any constable that shall demand the same, to the use of the poor: And all constables are hereby impowered, and by virtue of their office required, to search public houses and places suspected to entertain such tipplers, and them, when found, quietly to disperse; but in case of refusal, to bring the persons so refusing before the next Justice of the Peace, who may commit such offenders to the stocks, or bind them to their good behaviour, as to him shall seem requisite. And the keepers of such ale-houses, taverns, or other public house or place, as shall countenance or tolerate any such practices, being convicted thereof, by the view of a single magistrate, his own confession, or the proof of one or more credible witnesses,

Penalty on persons who sit tippling in taverns on Sunday.

And on innholders, &c. suffering the same.



1705. shall, for every offence, forfeit and pay ten shillings, to be recovered as and for the uses abovesaid.

Passed in 1705.—Recorded A. vol. I. page 142. (q)

(q) The 1st, 2d, 3d, and 6th sections of this act, relating to performing worldly business on Sunday, are supplied by the 1st section of the act for prevention of vice and immorality, &c. passed April 22d, 1794, (post chap. 1746,) which enacts, that if any person shall do or perform any worldly employment or business whatsoever, on the Lord's day, commonly called Sunday, works of necessity or charity only excepted, or shall use or practise any unlawful game, hunting, shooting, sport or diversion whatsoever, on the same day, and be convicted thereof, every such person, so offending, shall, for every such offence, forfeit and pay four dollars, to be levied by distress; or in case he or she shall refuse or neglect to pay said sum, or goods and chattels cannot be found, whereof to levy the same by distress, he or she shall suffer six days imprisonment in the house of correction of the proper county; *provided always*, that nothing herein contained shall be construed to prohibit the dressing of victuals

in private families, bake houses, lodging houses, inns, and other houses of entertainment, for the use of sojourners, travellers or strangers, or to hinder watermen from landing their passengers, or ferrymen from carrying over the water travellers, or persons removing with their families on the Lord's day, commonly called Sunday, nor to the delivery of milk, or the necessities of life, before nine of the clock in the forenoon, nor after five o'clock in the afternoon of the same day.

By the act of March 25th, 1805, (post chap. 2568,) the select and common councils of Philadelphia, the corporation of Southwark, and the incorporated part of the Northern Liberties are authorized to pass ordinances to regulate the Sunday markets in the said city and districts; and the act of 1794, so far as on this head, it respects the said city and districts, is repealed.

See the form of the conviction in the 4th section of the act of 1794.

## CHAPTER CXXI.

### *An ACT against incest.*

Incestuous marriages to be void and finable.

FOR the preventing of incestuous marriages within this province, *Be it enacted*, That all marriages hereafter made, being within the degrees of consanguinity or affinity according to the following table, are hereby declared to be void, to all intents and purposes, and it shall and may be lawful for the Governor for the time being to grant a divorce from the bonds of matrimony, and the parties shall be fined to the value of one third part of their estates.

Penalty on incestuous fornicators, &c.

II. And if any person or persons shall be convicted of incestuous fornication or adultery, he, she or they, so convicted, shall suffer such punishments as are by law against fornication and adultery, and be fined to the value of one third part of their estates, to be paid to the Proprietary and Governor, for the time being, for the support of government, and defraying the contingent charges thereof.



The TABLE of Degrees of CONSANGUINITY and AFFINITY is as follows:

Degrees of Consanguinity.	Degrees of Affinity.	Degrees of Consanguinity.	Degrees of Affinity.
A man may not marry {	A man may not marry {	A woman may not marry {	A woman may not marry {
His Mother.	His Father's Wife.	Her Father.	Her Mother's Husband.
His Father's Sister.	His Son's Wife.	Her Father's Brother.	Her Daughter's Husband.
His Mother's Sister.	His Son's Daughter.	Her Mother's Brother.	Her Husband's Son
His Sister.	His Wife's Daughter.	Her Brother.	The Son of her Husband's Son or Daughter.
His Daughter.	The Daughter of his wife's son or Daughter.	Her Son.	
The Daughter of his Son or Daughter.		The Son of her Son or Daughter.	

Passed in 1705.—Recorded A. vol. I. page 146. (r)

(r) See an act against clandestine relating to divorces, (post. chap. 1176,) marriages, ant. chap. 109; and an act and the next act, chap. 122.

## CHAPTER CXXII.

### An ACT against adultery and fornication.

**FOR** the preservation of virtue, chastity and purity, amongst the inhabitants of this province, and prevention of the heinous sins of adultery and fornication, *Be it enacted*, That if any person or persons shall commit adultery, and be thereof legally convict, such person or persons shall, for the first offence, receive on his or her bare back twenty-one lashes, well laid on, at the common whipping-post, and suffer imprisonment for one whole year, at hard labour, or be fined fifty pounds, one half to the use of the Governor, and the other half to the use of the poor, at the election of the party offending: And the injured husband or wife shall have a bill of divorce from board and bed, granted him or her by the Governor or Lieutenant Governor for the time being, if required within one year after conviction. And if such person or persons shall offend a second time, and shall again be thereof convicted, such person or persons shall receive on his or her bare back twenty-one lashes, at the common whipping-post, and be imprisoned seven years at hard labour, or pay one hundred pounds as aforesaid: And for the third, and every offence after, the same punishment, and be branded on the forehead with the letter A.

Penalty on committing adultery.

**II.** *And be it further enacted*, That if any person or persons shall commit fornication, and be thereof legally convicted, such person or persons shall receive twenty-one lashes on his or her bare back, well laid on, at the common whipping-post, or otherwise shall forfeit and pay to the Proprietary and Governor, for the support of the government of this province, and defraying the contingent charges thereof, the sum of ten pounds, at the election of such person so convicted as aforesaid.

On fornication.

**III.** *And be it further enacted*, That any single or unmarried woman, having a child born of her body, the same shall be sufficient proof of fornication.

What shall be proof of fornication.



1705. cient proof to convict such single or unmarried woman of fornication; and the man, by such woman charged to be the father of such child, shall be the reputed father; and she persisting in the said charge in the time of her extremity of labour, or afterwards in open court, upon the trial of such person so charged, the same shall be given in evidence, in order to convict such person of fornication.

What of a  
adultery.

IV. *And be it further enacted*, That if any married woman within this province shall be convicted of having a child born of her body, in the absence of her husband, and shall not be able, by credible evidence, to prove that her husband has cohabited or been in company with her, or has been in some of the Queen's colonies or plantations in this continent, betwixt the easternmost parts of New-England and the southernmost part of North-Carolina, within twelve months next before the birth of such child, such woman shall be punished as an adulteress.

Fornication  
where pu-  
nished.

V. *And be it further enacted*, That if any unmarried woman, absenting herself from the place where she usually lived, shall come into any county within this government, and there bear a bastard child, she shall be liable to be punished in the county where the said child is born, as she should or might have been, had the child been there begotten. And whosoever, within this government, shall knowingly entertain or shelter any such woman, without giving notice thereof to some one Justice of the Peace, within three days after her coming into his or her house to lodge, shall forfeit five pounds for every such offence.

Execution  
against a  
married wo-  
man, where  
to be stayed.

VI. *Provided always*, That the judgment or sentence against such married woman shall not be put in execution, till after the expiration of twelve months next after such her conviction, and she shall remain in prison during that time, unless she give security to abide the judgment. And in case her husband shall within the said term come and declare, that he had cohabited with his wife within the said term of twelve months next before the birth of the said child, and own and declare himself to be the father thereof, execution shall be stopped, and the woman discharged.

A servant  
woman hav-  
ing a bas-  
tard child  
shall serve a  
further term.

VII. *And be it further enacted*, That if any single woman, being a servant by indenture or covenant, have a bastard child within the time of her servitude, she shall serve such further time, beyond the term in her indenture or covenant mentioned, as the Justices of the Peace, in their Quarter Sessions, shall think fit, as a compensation to her master or mistress for the loss and damage they had sustained, by reason of her bearing such bastard in the time of her servitude; *Provided* it be not more than two years, nor less than one.

VIII. *And be it further enacted*, That every person, being legally convict to be the reputed father of a bastard child, shall give security to the court, town or place, where such child was born, to perform such order for the maintenance of such child, as the Justices of the Peace, in their sessions, shall direct and appoint. (s)

Passed in 1705.—Recorded A. vol. I. page 147.

(s) By the 7th section of the supplement to the penal laws of the State, passed Sept. 23d, 1791, (post. chap. 1572,) so much of the act in the text, as

declares that whipping, imprisonment at hard labour, or branding, shall or may be a part of the sentence, on conviction of adultery, is repealed; and in all



cases of conviction for adultery, a fine not exceeding fifty pounds shall be imposed, and in addition thereto the offender shall be imprisoned for any time not exceeding 12, nor less than 3 months.

By a supplement to this act, passed 21st March, 1772, (post. chap. 662) the moiety of all fines imposed on persons convicted of adultery, shall be to and for the use of the Governor, and the other moiety to the overseers of the poor of the city, district or township, where the offender shall reside at the time of committing the fact, for the use of the poor thereof. And by the act of January 28th, 1777, passed in consequence of the revolution, and change of government, all fines, &c. granted to the Governor, by any laws in force, and revived by that act, are declared to be for the use of the State, and to be paid into the State treasury.

With respect to incestuous adultery, see the preceding act against incest.

By the 4th section of the act concerning divorces and alimony, passed 19th Sept'r, 1785, (post. chap. 1176,) the proceedings to obtain a divorce are regulated, which supersedes the power in the act in the text. And by the same act, it is declared, that if either husband or wife marry again, on rumour of the death of the other party, who has been absent for two years, he or she shall not be liable to the pains of adultery, &c. and see the note to the next following act against bigamy.

The punishment of whipping is also taken away by the 4th section of the act to reform the penal laws of the State, passed April 5th, 1790, (post. chap. 1505.) See the note to the act against defacers of charters, ante. pa. 4, (chap. 16.)

By the 6th section of the act entitled "A supplement to the penal laws of the State," passed Sept'r 23d, 1791, (post. chap. 1572,) reciting, That whereas it sometimes happens that bastard children, begotten out of the State, are born within the State, and others begotten within one of the counties of the State are born in another county, and difficul-

ties had arisen about the place of trial; and it is reasonable and just that the reputed fathers of bastard children should be at the expense of their maintenance; it is enacted, that in the latter case, the prosecution of the reputed father shall be in the county where the bastard child shall be born, and the like sentence passed as if the bastard child had been begotten within the same county; and in the former case, to wit, of a bastard child begotten out of the State, and born within the State, the like sentence shall be passed, except in the imposition of a fine, or corporal punishment in lieu thereof, which part of the sentence shall be omitted.

By the second section of an act entitled "A supplement to sundry penal laws of this Commonwealth," passed March 21st, 1806, (post. chap. 2687,) in all cases where, by law, a fixed or specific fine is affixed to the commission of any crime, the court is authorized to sentence the offender to pay such fine as the Court in its discretion may judge right; *Provided*, the same shall not exceed the fine heretofore affixed by law.

*Respublica v. Roberts.*

Indictment for adultery. The woman was married; but the indictment did not state the defendant to be so; and in fact he was not. The Court, after consideration, delivered an unanimous opinion, that under the act of Assembly of 1705, and the uniform practice of 85 years (a practice, which, though it does not make the law, must be strong evidence of what the law is,) the indictment could not be supported on the charge of adultery: but that the judgment, for fornication only, must be pronounced against the defendant. April term, 1791, in Sup. Court. 2 Dallas, 124.

On a conviction of bastardy, the uniform practice has been, to make an allowance for lying-in expenses, and a gross sum for the support of the child from its birth to the time of judgment. And where the person who has borne these expenses is dead, the money may be well awarded to his representatives. MSS. Reports, Sup. Court.

## CHAPTER CXXIII.

### *An ACT against bigamy.*

*BE it enacted*, That whosoever shall be convicted of having Penalty on bigamy. two wives or two husbands, at one and the same time, shall be whipped on his or her bare back thirty-nine lashes, and be imprisoned during life at hard labour, and the second marriage shall be



1705.

void. And if any man or woman, being unmarried, shall knowingly marry the husband or wife of another person, such man or woman shall be punished as aforesaid; and the first wife or husband of the person offending against this act shall have a bill of divorce from board and bed, granted by the Governor for the time being, against the husband or wife so offending, if desired within one year after conviction.

Passed in 1705.—Recorded A. vol. I. page 149. (t)

(t) The offence defined in this act is said to be, properly, polygamy, and not bigamy, which originally had a different meaning. Bigamy is, however, now understood in law to be, where a person marries a second wife, or husband, the first being living; and in *England*, by the stat. 1. Jas. 1. c. 11, (which does not extend to Pennsylvania,) is felony.

By the 4th section of the act to reform the penal laws of this state, passed April 5th, 1790, (chap. 1505,) The punishment for this offence is altered, and it is enacted, that every person convicted of bigamy, &c. or of any other offence not capital, for which by the laws in force before the act entitled "An act to amend the penal laws of this state," (passed September 15th, 1786, and repealed by the act of 1790,) burning in the hand, whipping, or imprisonment for life, is or may be inflicted, shall instead of such parts of the punishment, be fined, and sentenced to undergo a confinement at hard labour, be fed and clothed as is in that act directed, for any term not exceeding two years, in the discretion of the court.

By the second section of the act, entitled "A further supplement to the penal laws of this state," passed April 4th, 1807, (chap. 2305,) any person convicted of this offence, and sentenced to hard labour for the term of two years, may, at the discretion of the court,

within three months after conviction, be removed to the gaol and penitentiary house of the city of Philadelphia, &c.

The latter part of this act is virtually repealed by the "Act concerning divorces and alimony;" passed September 19th, 1785, (chap. 1176,) which declares the causes, and regulates the proceedings respecting divorce. By the 4th section of that act it is provided, "That if any husband or wife, upon any false rumour, in appearance well founded, of the death of the other (where such other has been absent for the space of two whole years) hath married, or shall marry again, he or she shall not be liable to the pains of adultery; but it shall be in the election of the party remaining unmarried, at his or her return, to insist to have his or her former wife, or husband restored, or to have his or her own marriage dissolved, and the other party to remain with the second husband or wife; and in any suit or action instituted for this purpose, within one year after such return, the court may and shall sentence and decree accordingly."

In prosecutions for bigamy, the second husband or wife, may be a witness to prove the fact of the second marriage, after the first marriage shall have been established; for the second marriage being void, they were, in fact, never husband and wife.

## CHAPTER CXXVIII.

### *An ACT against riots and rioters.*

What to be  
deemed a  
riot.

*BE it enacted*, That if any persons, to the number of three or more, shall meet together with clubs, staves, or any other hurtful weapons, to the terror of any the peaceable people or inhabitants of this province, and shall commit, or design to commit, violence or injury upon the person or goods of any of the said inhabitants, and shall be convicted thereof, such persons shall be reputed and punished as rioters, according to the laws of *England*; and such act of terror or violence, or design of violence, shall be deemed and accounted a riot.

Passed in 1705.—Recorded A. vol. I. page 153. (u)

(u) The punishment in *England* for the offences provided against in this act, is Fine and Imprisonment.

The act in the text not only includes the actual violence, or injury, but the design to commit such violence or inju-



ry, and seems to embrace *riots, routs, and unlawful assemblies*, under the general term of *Riot*, which, by the English law, are thus defined.

An *unlawful assembly* is, when three or more do assemble themselves together to do an unlawful act, as to pull down inclosures, &c. and part without doing it, or making any motion towards it.

A *Rout* is, where three or more meet to do an unlawful act, upon a common quarrel; as forcibly to break down fences, &c. upon any claim or pretence of right, &c. and make some advances towards it.

A *Riot* is, where three or more actually do an unlawful act of violence, either with, or without a common cause of quarrel; as if they beat a man, or do any other unlawful act with force and violence; or even do a lawful act, as removing a nuisance, in a violent and tumultuous manner.

The only English statute respecting riots, reported to extend to Pennsylvania, is the stat. 34 Edw. 3. c. 1. (referred to in the note to chap. 41. *ante*. pa. 6,) which has been liberally construed for the advancement of justice; and it has been held, that if a justice of the peace find persons riotously assembled, he alone, hath not only power to arrest the offenders, and bind them to their good behaviour, or imprison them if they do

not offer good bail, but that he may also authorize others to arrest them by a bare *parol* command without other warrant; and that by force thereof, the persons so commanded, may pursue, and arrest the offenders, in his absence, as well as presence.

The following points have been ruled in the Supreme Court. MSS. Reports.

Information will lie against a justice of the peace, for not actively assisting in suppressing a riot.

It is the duty of every citizen to endeavour to suppress a riot; and when rioters are engaged in treasonable practices, the law protects other persons in repelling them by force.

After a recognizance taken to answer for a riot, justices of the peace should not issue warrants for assaults and batteries, which are *overt* acts of the former offence.

See the act entitled "An act to prevent intrusions on lands within the counties of Northampton, Northumberland and Luzerne," passed April 11th, 1795, (*post*. chap. 1815,) and a supplement thereto, passed February 16th, 1801, (*post*. chap. 2171,) for the punishment of settlers on certain land, on pretended titles not derived from Pennsylvania; and of combinations and conspiracies to effect certain objects by that act declared to be unlawful.

1705.

## CHAPTER CXXXII.

*An ACT for the better confirmation of the owners of lands, and inhabitants of this province, in their just rights and possessions. (x)*

**WHEREAS** the late king Charles the second, by his royal charter to William Penn, Proprietary and Governor of this province, did declare, that the laws for regulating and governing of property within this province, for descent and enjoyment of lands, as likewise for the enjoyment and succession of goods and chattels, should be and continue the same, as they should be for the time being by the general course of the law in England, until the said laws should be altered by the said William Penn, his heirs or assigns, and by the freemen of the said province, their delegates or deputies, or the greater part of them.

And whereas divers laws have been enacted in this province, that made all lands and tenements, without any regard to the fee-simple, and other tenures by which they were held, as liable to pay debts as chattels, and to be taken and sold upon executions, or by decrees in courts of equity, or to be sold by such executors, as had no power by their testators' wills for so doing, and in certain cases to be sold by administrators, as also to be divided, allotted and dis-

(x) See *post*. chap. 152, and the several acts respecting the judiciary department, *post*. chap. 236. This act is

chiefly retrospective. The second section, however, contains an important general provision.



1705. tributed, amongst the widows and children of intestates: in pursuance of which laws, divers lands, tenements, and hereditaments in this province, have been sold, delivered, assigned, allotted or distributed accordingly. Now, to the end that those sales, deliveries, assignments, and allotments or distributions, may have effect, according to the tenor and true meaning of the said laws, and that the possessors and owners of the said lands and hereditaments so sold, delivered, assigned and distributed, and their heirs and successors, may quietly have, hold and enjoy the same:

All grants, &c. made according to the form of those laws, declared good against the grantors, &c.

I. *Be it enacted*, That all and singular the bargains and sales, being made *bonafide*, and for valuable consideration, as also all assignments, grants, and allotments or distributions, made to any person or persons whatsoever, of any lands, tenements and hereditaments, in this province, according to the tenor and direction, or the true intent and meaning of the said laws in those cases made and provided, shall be, and are hereby declared to be good and effectual, and shall stand and be taken, deemed and adjudged good, sure and available in law, against all persons whatsoever, according to the tenor and effect of the same bargains, sales, assignments, grants, and allotments or distributions; and that every person or persons, bodies politic and corporate, their heirs and successors, and all claiming by, from or under them, or any of them, for and according to their and every of their several estates and interests, of, in and to, the said lands, tenements and hereditaments, with their appurtenances, so as aforesaid sold, delivered, assigned and allotted, shall or may quietly and peaceably have, hold and enjoy the same lands, tenements, and hereditaments and premises, and every part thereof, against all and every person and persons, their heirs and assigns, having, claiming, or pretending to have, any estate, right, title, interest, claim or demand whatsoever; of, in or to, the same; *Saving nevertheless*, to all and every person and persons, bodies politic and corporate (other than to the person and persons for payment of whose debts, or maintenance of whose widows and children, any of the said lands, tenements or hereditaments, have been sold, delivered or conveyed as aforesaid, and his and their heirs; and other than to the heirs at law of the said intestates, or any claiming under them, who shall attempt to avoid or annul the said divisions, allotments or distributions, which have been made of the said intestates, lands and hereditaments amongst their widows and children, by virtue or in pursuance of the said laws) all such actions, estates, possessions, rights, titles, interests, rents, profits and demands, as they or any of them have, shall, may or ought to have, of, in or to, all or any of the said lands, tenements and hereditaments, or any part thereof, in such manner and form as if this act had never been made; so that they do pursue their said rights, titles, claims and interests, by way of action or lawful entry, before the first day of October, which will be in the year of our Lord, one thousand seven hundred and ten.

Strangers may pursue their claims within a limited time.

Lands, &c. which have been distributed according to these laws, shall

II. *Provided always*, That all and every the widows and children of intestates, to or amongst whom any lands, tenements or hereditaments, have been allotted or distributed by virtue of the said laws, and all and every person or persons, to whom any parts



or purparts of lands, tenements, and hereditaments, have, as aforesaid been, or hereafter shall be, sold or delivered upon executions, shall hold and enjoy their said respective parts, purparts or allotments, in severalty, or as tenants in common, and not as joint tenants. 1705.  
be held by the parties in severalty.

III. *And be it further enacted*, That no deed, grant, conveyance or assurance, heretofore made, of any lands, tenements or hereditaments whatsoever, shall be judged or taken to be defective, avoided or prejudiced, for or by reason of any want of form, or formal or orderly parts of a deed, as *the Premises, Habendum, Tenendum, Reddendum, the Clause of Warrantee, the Conclusion, In Witness whereof*, and the *Date*, or for *Mis-naming, Mis-recital, or Non-recital*, of any of the said lands or hereditaments, or for *Mis-recital or Non-recital, or not mentioning, or not true mentioning*, of the grantor's estate of, in or to, the premises, or for want of *Livery and Seizin, or Attournment, or Proofs* of the consideration money actually paid, or for *not producing in Court*, upon trial, any of the said deeds or grants, recited in the said conveyances, or for *not being recorded* in the Rolls-office: but that all and every the said deeds, grants and conveyances, releases and assurances, shall be, and are hereby declared and enacted to be, good and available in law, and shall be expounded as the law of this province was when they were made, and shall conclude all strangers, as well as privies to the same: saving to every person and persons, other than to the said grantors, their heirs and successors, all such rights, titles, estates, claims and interests, as they or any of them had, or ought to have, of, in or to, the said lands, tenements and hereditaments, or any part thereof, at the time when such deeds or conveyances were sealed and delivered, so as they do pursue their said rights, titles, claims or interests, by way of action or lawful entry, before the first day of October, which shall be in the year of our Lord one thousand seven hundred and ten. All deeds defective in the form, &c. declared good.  
  
Strangers may pursue their claims within a limited time.

Passed in 1705.—Recorded A. vol. I. page 155.

## CHAPTER CXXXIII.

*An ACT concerning the probates of written and nuncupative wills, and for confirming devises of lands.*

*BE it enacted*, That all wills in writing, wherein or whereby any lands, tenements or hereditaments, within this province, have been, are, or shall be devised (being proved by two or more credible witnesses, upon their solemn affirmation, or by other legal proof in this province, or being proved in the Chancery in England, and the bill, answer and depositions transmitted hither, under the seal of that court, or being proved in the Hustings or Mayor's Court in London, or in some Manor-Court, or before such as have or shall Written wills, proved in this province, or elsewhere, and certified copies thereof, shall be good, and the estate given by the same shall pass.



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Letters of administration granted out of this province declared good.

have power in England, or elsewhere, to take probates of wills, and grant letters of administration, and a copy of such will, with the probate thereof annexed or indorsed, being transmitted hither, under the public or common seal of the courts or offices where the same have been or shall be taken or granted, and recorded or entered in the Register-General's office in this province, shall be good and available in law, for the granting, conveying and assuring of the lands or hereditaments thereby given or devised, as well as of the goods and chattels thereby bequeathed; and that the copies of all wills and probates, under the public seals of the courts or offices where the same have been or shall be taken or granted respectively, other than copies or probates of such wills as shall appear to be annulled, disproved or revoked, shall be judged and deemed, and are hereby declared and enacted, to be matter of record, and shall be good evidence to prove the gift or devise thereby made; and that all such probates, as well as all letters of administration granted out of this province, being produced here, under the seals of the courts or offices granting the same, shall be as sufficient to enable the executors or administrators, by themselves or attornies, to bring their actions in any court within this province, as if the same probates or letters testamentary or administrations were granted here, and produced under the seal of the Register-General's office of this province.

II. *Provided always*, That if any of the wills, whereof copies or probates shall be so as aforesaid produced and given in evidence, shall, within seven years after the testator's death, appear to be disproved or annulled before any judge or officer, having consance thereof, or shall appear to be revoked or altered by the testator, either by a later will, or codicil in writing, duly proved as aforesaid, then, and in every such case, it shall and may be lawful for the party aggrieved, or his or their heirs, executors or assigns, to have their action for what shall be taken or detained from them by occasion of such wills, or have their writ or writs of error for reversing the judicial proceedings thereupon, as the case shall require, any thing herein contained to the contrary notwithstanding.

A nuncupative will, where good and where ngr.

III. *And be it further enacted*, That from henceforth no nuncupative will, be good, where the estate thereby bequeathed shall exceed the value of thirty pounds, that is not proved by two or more witnesses, who were present at the making thereof, nor unless it be proved that the testator, at the time of pronouncing the same, did bid the persons present, or some of them, bear witness, that such was his will, or to that effect; nor unless such nuncupative will be made in the time of the last sickness of the deceased, and in the house of his or their habitation or dwelling, or where he or she hath been resident for the space of ten days, or more, next before the making of such will, except where such person was surprised or taken sick, being from his own house, and died before he returned to the place of his or her dwelling.

IV. *And be it further enacted*, That after six months past, after speaking of the pretended testamentary words, no testimony shall be received to prove any will nuncupative, except the said testimony,

or the substance thereof, were committed to writing within six days 1705.  
after the making of the said will.

V. *And be it further enacted*, That no letters testamentary, or probate of any nuncupative will, shall pass the seal of the Register-General's office, in the respective counties of this province, till fourteen days, at the least, after the death of the testator be fully expired; nor shall any nuncupative will be at any time received to be proved, unless process have first issued out to call in the widow or next of kindred to the deceased, to the end they may contest the same, if they please.

Nuncupative wills not to pass the seal, &c. within 14 days.

VI. *And be it further enacted*, That no will in writing, concerning any goods or chattels, or personal estate, shall be repealed, nor shall any clause, devise or bequest therein, be altered or changed by any words or will, by word of mouth only, except the same be, in the life-time of the testator, committed to writing, and, after the writing thereof, read unto the testator, and allowed by him, and proved to be so done by two or more witnesses.

No written will to be altered, &c. by words only, except, &c.

VII. *Provided always*, That notwithstanding this act, any mariner or person being at sea, or soldier being in actual military service, may dispose of his moveables, wages, and personal estate, as he or they might have done, before the making of this act.

Mariners', &c. wills not within this act.

VIII. *And be it further enacted*, That there shall be an officer called Register-General, to be commissioned by the Governor, from time to time, for the probate of wills, and granting letters of administration in this province; which Register-General shall keep his office at Philadelphia, and shall, from time to time, constitute a sufficient deputy, to officiate for him in each of the other counties of this province; who, being by him deputed, shall be, and are by this act impowered to take probates of wills, and grant letters of administration in the respective counties, as fully and amply as the Register-General himself ever could or can do, according to the powers granted by the royal charter of the late King Charles the second. Which deputies shall have and use a common seal, to be provided at the charge of the respective counties where they serve, with the like inscriptions as is or shall be upon the seal of the Register-General's office at Philadelphia. *Provided*, That no person, who shall prove any will, or take letters of administration, in any one of the counties of this province, shall be obliged to prove the same will, or take letters of administration in any other of the said counties, wherever such testator's or intestate's estates may lie or be. But before any Register-General, or his deputies, shall enter upon their respective offices, they shall be duly qualified, either before the Governor, or in the Orphans' Court of the county where they respectively officiate. And every Register-General, and every of his deputies, shall find one or more sufficient sureties with himself, to become bound to the Governor for the time being, in a bond of two hundred pounds, for the true and faithful execution of his office, and for the delivering up the records and other writings belonging to the said office, by him, his heirs, executors or administrators, to his successor in the said office, whole and undefaced; which said bond shall be recorded in the Orphans' Court, and be kept by one of the Justices of the same Court, as the majority of

A Register-General's office in Philadelphia, &c.

Probate of wills and letters of administration not to be in more than one county.

The Register-General and his deputies to be qualified and give security.



1705. the Justices for the time being shall order ; to be made use of for making satisfaction to the parties that shall be damnified or aggrieved, as is or shall be directed by the laws of this province in such cases. And if the Register-General, or his deputies, or any of them, shall officiate in the said office before he has given such security, or if the Register-General for the time being, shall refuse or neglect to constitute a Deputy-Register in each county, according to the direction of this act, then, and in every such case, he or they so offending shall forfeit the sum of two hundred pounds, to be recovered in any Court of Record in this province ; and the one half thereof shall go to the Governor, for support of government, and the other half to him or them that shall sue for the same.

Passed in 1705.—Recorded A. vol. I. page 158. (x)

(x) An act was passed June 7th, 1712, establishing the Register-General's office, and regulating his powers and duties ; but that act was altered and supplied by the act of March 14th, 1777, (post. chap. 737,) and the office of Register-General of wills formally abolished, in consequence of the change of government, and the direction of the 34th section of the constitution of 1776, which provided for the institution of a Register's and Recorder's office in each county of the State, and vested the appointment in the General Assembly ; and by an act passed August 31st, 1778, (post. chap. 793,) sect. 9, 10, provision was made for rendering valid probates of wills and letters of administration, issued between the 4th of July, 1776, and the 14th March, 1777, by the late officers. The present Constitution vests the appointment of Registers and Recorders in the Governor, and directs their offices to be kept in each county. ART. 5, SECT. 11. And, by ART. 6, SECT. 3, in the county town of each county, unless by special dispensation of the Governor, for a limited time, in any county newly established.

By ART. 5, SECT. 7, the Register of Wills, together with the Judges of the Court of Common Pleas of each county, or any two of them, shall compose the Register's Court of each county : Which provision is carried into the act to establish the judicial courts of this Commonwealth, &c. passed April 13th, 1791, sect. 5, (post. chap. 1564,) in the following terms : " The President and Judges, or any two of them, and the Register of Wills, shall compose the Register's Court in each county, and shall have all and singular the powers, jurisdictions and authorities, thereunto belonging.

By the 18th section of the same act, upon the hearing of any cause litigated before the said Register's Court, the

depositions of the several witnesses examined therein, shall be taken in writing, and made part of the proceedings in the cause, upon which the decree of the said Register's Court may be reversed for any error arising either in law or in fact, or affirmed according to the merits and justice of the case. But if the Register's Court, upon a dispute upon facts arising before them, shall send an issue into the Court of Common Pleas of the county, to try the said facts, which they shall do at the request of either party, and a verdict establishing the said facts be returned, the said facts shall not be re-examined on appeal. And no appeal from the decree of the said Register's Courts, concerning the validity of a will, or the right to administer, shall stay the proceedings, or prejudice the acts of any executor or administrator pending the same, provided the executor shall give sufficient security for the faithful execution of the will and testament to the Register ; but in case of refusal, the Register is directed to grant letters of administration during the dispute, which shall suspend the power of such executor during that time.

And by the supplement to the act to establish the judicial courts, passed Sept'r 30th, 1791, sect. 2, (post. chap. 1590,) from all acts and decisions of the several Registers for the probate of wills, &c. appeals shall lie to the respective Register's courts, if made within the term of two years ; with the usual saving as to minors, femes covert, persons *non compos mentis*, or absentees, and in such case within five years after the disability is removed, but not afterward, nor otherwise. By the 24th section of the act to regulate intestate's estates, &c. passed April 19th, 1794, (post. chap. 1740,) an appeal from any final decree or sentence of the Register's court, lies to the Supreme Court,



in all cases and instances, where the sum mentioned in the said decree, sentence or judgment, or the sum or other matter in controversy shall exceed the sum of fifty pounds.

By the act establishing the Circuit Courts in each county, passed March 20th, 1799, the said Circuit Courts had authority to allow and take cognizance of appeals from the Register's Court. But that act having been repealed by the act of March 11th, 1809, the appeal to the Supreme Court is restored by an express provision in the 6th section, and no other court now exists, which can sustain it.

By the 23d section of the above recited act of 1794, it is provided, that where a man makes his will, and afterwards marries, or has a child born, he shall be deemed to have died intestate as to the widow, or after born child, which follows the original provision in the act of March 23, 1764, (repealed;) and in the 1st section of the same act, (1794,) the Register is to take bond on granting letters of administration, and the condition of such bond is prescribed. And by the 11th section of the act of April 4th, 1794, all bonds taken by the Register shall be in the name of the Commonwealth.

The fees to be received by the Register of Wills are fixed by the act of April 20th, 1795, (post. chap. 1851.)

The amount of security to be given by Registers of Wills, is ascertained in the act of March 14th, 1777, (post. chap. 737,) and in counties since erected, by the several acts dividing and establishing them.

By the 5th section of an act passed April 6th, 1791, (post. chap. 636,) when any last will and testament is brought to be recorded in any of the Register's offices of this State, which shall contain any bequest or legacy, to a public corporate body, the Register is enjoined and required, that within six months, he shall make known, by letter addressed to the corporate body, in whose favour such bequest or legacy is made, the nature and amount of the same, together with the names of the executors of such last will and testament.

By the act of March 14th, 1777, the Register of Wills in each county is directed to appoint a deputy to officiate in his absence, and for whose conduct he shall be accountable: and the deputy, in the absence of his principal, can exercise all the powers and duties of the Register.

By the 9th section of the supplement to the intestate act, passed April 4th, 1797, (post. chap. 1938,) it is made the

duty of the Register to give notice in at least three of the most public places in his county, of the filing of administration accounts in his office, and of the time and place of presenting the same to the Orphans' Court for allowance, and also to set up a copy of such notice in his office.

By the 10th section of the same act, a devise or bequest to a wife, shall be taken to be in lieu and bar of dower, unless otherwise expressed in the will. But the widow may elect to take either her dower, or the estate devised or bequeathed.

By the 17th section of the act of 1794, in all cases where the Register hath used heretofore to grant administration with the will annexed, he shall continue so to do.—So,

Letters of administration may be revoked in certain cases, by the Orphans' Court, and the Register is directed to grant new letters. Act of 1713, sect. 2, (post. chap. 197,) And in what cases executors shall be obliged to give security—see sect. 3, and also the act of April 4th, 1797; on refusal to give security, the Court shall vacate letters testamentary, and the Register shall issue letters of administration *de bonis non*—sect. 1. and by sect. 3. Executors and administrators, upon settling their accounts, may be dismissed from the duties of his or their appointment, and surrender the residue of the estate to such person or persons as the Court may appoint; and the Register shall take bond with sureties, &c. and administer the usual oaths or affirmations to such persons so appointed, and grant letters of administration *de bonis non*.

The Orphans' Court is also authorized to take and require security from administrators, empowered to sell any part of an intestate's estate under the order of that Court, by the 3d section of the act of 26th March, 1808, (post. chap. 2965.)

Lands devised to be sold, without directing who shall sell, or where executors are directed to sell, may be sold by the surviving executors, or by the acting executor, where the others refuse, or renounce, or by the administrators with the will annexed—or where letters testamentary are vacated, by the administrator *de bonis non*—or where any one of the executors shall be discharged or dismissed, by the remaining executor or executors. March 12th, 1800, (post. chap. 2120.) The testator may, however, direct otherwise. See 2 Dallas, 223. 1 Binney, 546.

A naked authority given by will to executors to sell lands, they shall hold



1705. the same interest, and may bring the like actions respecting it, as if the same had been devised to *them to be sold*; but testator may direct otherwise. March 31st, 1792, (post. chap. 1607,) and by the same act, by leave of the Court, &c. may convey lands contracted for with their decedents.

Executors declared to be trustees for next of kin, of the residue of the personal estate, undisposed of by the will. April 7th, 1807, (post. chap. 2812,) see 1 Binney, 584. Certain duties enjoined on Registers by the act of April 1st, 1797, (post. chap. 1935,) respecting the settlement of the estates of deceased officers and soldiers, &c.

An exemplification of a will, made in *England*, and certified generally to have been proved, approved, and registered, in the year 1704, in the prerogative Court of *Canterbury*, under the seal of that Court, allowed, on debate, to be read in evidence to the jury, in 1759. *Lessee of Lewis & al. v. Stammers*, 1 Dallas, 2. And in *Morris's Lessee v. Vanderen*, *ibid.* 66. The plaintiff produced the probate of a will, under the seal of the prerogative court of *Canterbury* in *England*, which was not recorded in the office here. THE COURT allowed the probate to be read, as by the act of assembly passed in 1705, it is made evidence here.

But, since the revolution (1789,) it has been decided in the Supreme Court, that letters of administration, granted by the archbishop of *York*, were not a sufficient authority to maintain an action within this *Commonwealth*. *Grane & al. v. Harris*, 1 Dallas, 456. See 1 Binney, 63; S. C. 4 Dallas, 292.

This act requires all wills to be in writing, and to be proved by two or more credible witnesses, upon their solemn affirmation, or by other legal proof in this province.

The genuine exposition of the foregoing clause of the act is fixed by the case of *Lewis v. Maris*, 1 Dallas, 278, in which it was decided, that the Legislature evidently meant to require two witnesses in proof of every testamentary writing, whether for the disposition of real or personal estate; and the words, *other legal proof*, are put in opposition to *solemn affirmation*, in order to admit the attestation of an oath. But it is not necessary, that a will devising real estate, in this *Commonwealth*, should be sealed; nor that all the subscribing witnesses should prove the execution; nor that the proof of the will should be made by those who subscribed as witnesses; nor that the will should be subscribed by the witnesses. *Hight v. Wilson*, 1 Dallas, 94.

But though a will must regularly be proved by two witnesses; yet circumstances may supply the want of one witness, where they go directly to the immediate act of disposition. As where a scrivener received instructions from the decedent, at his bed side, in the presence of two persons, one of whom was the physician; and as he made the short memorandums of them in writing, he read and explained them to him, and asked him if he was satisfied therewith, as his will; to which he replied in the affirmative; and was then in his perfect senses; but in considerable, though not continual, pain. It was proved that he was at no loss with respect to his directions, and seemed to have thought of his will before; which was remarked at the time. The scrivener retired to another room, to draw a formal will, but before this latter could be read to the decedent more than half through, his senses had left him, and he died in an hour afterwards. One of the persons present was dead at the time of the trial of the issues; but his deposition taken, though very imperfectly, before the Register, on the *caveat*, confirmed the substantial parts of the testimony of the scrivener; but he was not so minute; he had heard some of the directions given by decedent, but not all, as he spoke in a low tone of voice—they were written down in his presence, and were read to decedent—but he did not identify the minutes, though they were filed in the Register's office. The physician swore that he was in the room all the time, as he thought, when decedent gave the directions, which were committed to writing, and read to him afterwards, and he said they were all right, and he believed the memorandums produced were those taken at the time from the instructions.

The Court said the only doubt was, whether there were two witnesses to prove the written instrument. The scrivener was one complete witness, and the most material circumstances related by him in detail, were proved by the deposition; and all the papers must necessarily have been before the Register when the deposition was taken on the *caveat*; and if necessary, the physician would supply the place of one witness. The jury established the notes, as the will of the deceased.

*Eyster and Kagey v. Young*. Circuit Court, *York*, April 1803. MSS. Reports. The same point was held in *Boudinot v. Bradford*, MSS. Reports—see the same case, but not full on this head. 2 Dallas, 266.



It was said by the Court in the above case of *Eyster v. Young*, (two Judges then holding the Circuit Court,) that written declarations of a man's mind, how his estate shall go after his death, made *animo testandi*, may amount to a will, when duly proved. That the law requires no particular form of publication; it may be inferred from circumstances, and will have the same force to render the instrument valid, as if expressed by parol declaration. It is not necessary to establish a will, that two witnesses must swear, that they were present, and saw it executed. If the subscribing witnesses are dead, their hands writing may be proved. So, a will written by the testator himself—his hand writing may be proved by two witnesses.

So where the special instructions for drawing a will are proved by two witnesses, and a will was drawn conformable thereto, in testator's life time, though he does not sign it, it is a good will in writing under the act of Assembly of 1705.

As, where one *Thomas Walmsley*, (the deceased,) had desired one *D. Llewesley* to draw his will, and gave him particular verbal directions concerning it, in the fall of 1787, and on the 11th February, 1788, repeated the several devises to him, and requested him to have it ready the third day following. At the time appointed, *L.* went to his house, where he mentioned the particulars of his will to him a third time; and in consequence thereof, *L.* procured one *E. C.* the same day, to reduce it to writing, exactly conformable to the testator's directions, and brought it to him ready drawn, and asked him if he should read the will to him; he answered, it was no matter, he was then too poorly to sign it, but hoped he would be better in the morning, and would then put his name to it. On the second interview he complained to *L.* that the drawing of the will had been so long neglected—He died about two hours after the written will was brought to him, in a fainting fit, without executing it.

On the same 11th of Feb'y, 1788, testator complained to one *H. Ridge*, that he was uneasy in his mind, that his will was not perfected; mentioned his earnest desire that *L.* should draw his will, that he had given him special directions for that purpose, and repeated the particulars of them to *Ridge*.

The intentions of testator, as to the general disposition of his property, and the reasons and grounds of his bequests, were also proved by other witnesses, in corroboration, to shew that the settled purpose of his mind, for some years

previous to his death, had been, that his will should be drawn agreeably to the instructions given to the said *D. L.* Those express instructions, given on the 11th of Feb'y, were proved by two witnesses, in manner above stated; and testator's recognition, on the day of his death, that he had given the said *L.* directions to draw his will, was proved by three witnesses. The jury found a verdict, establishing the will accordingly.

Another important point occurred in this case. An issue had been sent by the Register, to the Court of Common Pleas, at the request of one of the parties, (after a *caveat* had been filed against proving the writing as the will of *G. W.*) to try the validity of the instrument as a will; and after a full trial, the verdict of the jury established the validity of the will, and thereupon it was declared to be proved, and letters testamentary were issued thereon.

These proceedings were, of course, received in evidence, under the directions of the act of Assembly, and it was contended, that by force of the act in the text, and the act of Feb'y 28th, 1780, (now repealed, but the section relied on is supplied in the same terms by the 18th section of the act of April 13th, 1791, before cited,) which declares, that where such issue shall be directed, and a verdict be returned, establishing the facts, *the said facts shall not be re-examined on appeal*, this was complete and conclusive evidence. THE COURT, however, said, that they could not compel the party claiming under the will, to give further testimony, but permitted the opposite party to examine the witnesses who had given evidence in support of the will, on the feigned issue, and any other testimony to impugn the will, and that the jury, upon the whole, must form their judgments, under the direction of the Court. That there was nothing in the act of 1705, or of 1780, or of 13th April, 1791, which shews an intention in the Legislature, that such a probate should be conclusive evidence of a will of lands. The Court cannot wish the law to be so, and if even the fullest hearing has been had of all the contending parties, which is not generally the case, still new evidence, and additional circumstances may turn up, which would weigh greatly in the scale of justice. In the strongest point of view, the decision on the feigned issue could only affect the parties to the *caveat*; as to other contending parties, it would be *res inter alios acta*. Suppose on an ejectment brought to try the validity of a will, it could be made appear, that the person whose will was attempt-



1705. ed to be established, was still in full life; that the subscribing witnesses, who had proved it, had been convicted of perjury therein; or that the crimes of perjury and forgery could be fully proved by evidence at the bar; could it be reasonably urged, that the former proceedings were still incontrovertible, and conclusive evidence to the jury?

*Walmesley's Lessee v. Read. Bucks, October, 1791. MSS. Nisi Prius Reports.*

But better evidence will not be demanded to prove a will, than is in the party's power to give. Therefore, where a subscribing witness to a will, is out of the jurisdiction of the Court, his handwriting may be proved as if he were dead; for the Court has no power to oblige the Register of Wills to deliver out an original paper, lodged with him for probate, to be carried into another State, nor has it any control over a witness out of its jurisdiction.

*Engles & al. v. Bruington. Nisi Prius, Philadelphia, Feb'y, 1807. MSS. Reports.*

A will proved by two witnesses before a Justice of the Peace, and registered, was admitted in evidence. It was said by the Court, that it would certainly be more regular to prove the will before the Register of the county; because it is a branch of his duty, which he must be supposed to understand better than a Justice of the Peace: but the act does not expressly confine the depositions to be taken before the Register within the State; and it is well known, that many wills, in several counties, have been proved before Justices of the Peace. *Sharp's Lessee v. Petit. Chester Circuit Court, April, 1807. MSS. Reports.*

A will of personal property must be executed according to the law of the testator's domicile, at the time of his death. If it is void by that law, it will not pass personal property in a foreign country, although it is executed with all the formality required by the laws of that country.

This was solemnly adjudged in the case of *Desebats v. Berquier*, 1 Binney, 336, which was an issue directed by the Register, to try the validity of a certain paper writing, purporting to be the will of *Jean Theil*, who was an inhabitant of *Jeremie*, in the island of *St. Domingo*, and a subject of *France* at the time of making the said instrument, and continued to reside there till his death.—and by the laws of the said island, it was admitted, that the said instrument is not, nor was, at the time it was made, nor since, a last will and testament. And unless this instrument

was established as a will, he died intestate. The property intended to pass by the said instrument, was all *personal property*, and at the time of making the instrument, was, and hitherto has remained, and still remains in the hands of *persons resident in, and citizens of Pennsylvania*.—*Desebats*, the plaintiff, was, at the time of making the said instrument, an inhabitant of *St. Domingo*; but at the time of the death of the said *Jean Theil*, was an inhabitant of the Island of *Jamaica*. It was admitted that the instrument was in due form according to the laws of *Pennsylvania*.

The Court unanimously decided against the will, and in favour of the successor *ab intestato*. It is a clear proposition of the law of every country in the world, where the law has the semblance of science, that personal property has no locality; with respect to the disposition of it, with respect to the transmission of it, either by *succession*, or by *the act of the party*, it follows the law of the person.

To the same principles, see the case of *Guier v. O'Daniel and Young*, in the Orphans' Court of *Philadelphia*. 1 Binney, 349, (note.)

On a feigned issue to try the validity of a will, the Court before whom it is tried, but not the Register, has power to grant a new trial. 1 Binney, 448.

The plaintiff in a feigned issue, cannot enter a nonsuit, because it would defeat the act of assembly, which directs the issue to be tried, and the verdict to be returned to the Register's court. 1 Binney, 448.

A writ of error lies from the Supreme Court, on a judgment rendered in the common pleas, upon a verdict on a feigned issue. 1 Binney, 444.

An executor who is plaintiff in a feigned issue to try the validity of a will, is not a competent witness, being liable for costs. 1 Binney, 444.

The Supreme Court has an inherent power to direct an issue to try the validity of a will. MSS. Reports.

So, in all cases of dispute upon the fact of execution, or the *Sanity* of the testator, the Register's Court may send an issue into the court of common pleas, to have the facts tried by a jury, even without the request of either party: but when the dispute is about the *legality* of the execution, the Court is the proper tribunal. *Cumberland*, January, 1793. S. MSS.

A married woman in pursuance of an agreement made with her husband, before marriage, may dispose of her personal estate, by will, but not of her lands, at law. But where the husband, before marriage, covenants with his in-



tended wife, that she may dispose of her lands by will; and she devises them during coverture; this shall operate as a good appointment, and her heir at law shall be bound, without the legal estate having been vested in trustees. *Barnes's lessee v. Irwin*, 2 Dallas, 199.

A letter by an uncle, inviting an unmarried nephew to come here from Germany, and promising, if he proved obedient, and followed his directions, he should be the heir of his whole estate, cannot operate as a will. MSS. Reports, Supreme Court.

On the subject of revocations, it has been settled, that the revocation of a will of lands, since the act of assembly of 1705, cannot be by parol, but is subject to all the solemnities as a will of personal estate.

Where a second will is made, containing an express clause of revocation, the preceding will, though not formally cancelled, is revoked.

Where a second will is destroyed, *without more*, the preceding will, not having been cancelled, is generally speaking, *ipso facto*, revived.

Where a second will is cancelled, under circumstances that manifest an intention, either to revive, or not to revive, the preceding will, those circumstances must be proved, and all the facts evincing the intention of the party therein, shall be received in evidence; *revocavit, vel non*, being a question of intention, and the evidence does not go directly to destroy an existing will, but merely, to shew, in effect, that the deceased did not intend again to make, or re-establish a will, which he had once actually destroyed.

The mere act of making a second testament, is a revocation of a preceding testament, in relation to personal estate, the law throwing the personal estate on the executor as trustee.

*Boudinot v. Bradford*, 2 Dallas, 266. *Lawson v. Morrison*, *ibid.* 286.

A will made many years before, believed by the testator to be destroyed, but detained by one of the devisees, to prevent its being cancelled or altered, is thereby avoided. MSS. Reports, Supreme Court.

And besides *actual* revocations, there are other acts of the testator, which have always been considered as revocations, because *contrary* to, or *inconsistent* with the will, and evidencing an alteration of intention; as executing a deed in fee; or a lease for years to the same devisee, to commence after the testator's death; a subsequent marriage and birth of a child; cancelling, obliterating, or destroying the will, or such like. These are termed *implied, constructive,*

or *legal* revocations, and still subsist as they were before the act of assembly, or the statute of frauds. But all presumptive revocations may be encountered by evidence, and rebutted by other circumstances.

*Lawson v. Morrison*, 2 Dallas, 289.

On the construction of wills and devises, the decided cases, in the courts of Pennsylvania, are numerous, and are here referred to generally.

The intention of the testator is the great governing rule, since a man may devise his lands as he pleases, if his disposition of them be consistent with law. But the construction must be *ex visceribus suis*, and no word is to be rejected, which is not repugnant to the general intent. And though courts of justice will transpose the clauses of a will, and even construe "or" to be "and"—and "and" to be "or"—yet it shall be only in such cases where it is absolutely necessary so to do, to support the evident meaning of the testator; but they cannot arbitrarily expunge, or alter words, without such apparent necessity.

Where a testator uses proper technical expressions, courts are bound to say he understood the meaning of each, and they cannot substitute one for the other, unless by unavoidable and necessary construction, to make sense of the will. But they are warranted to give that effect to the will, which will best answer the devisor's *general* intention, though by so doing, some *particular* intention may be defeated.

The written words of a will shall not be supplied, contradicted, or explained, by parol evidence.

MSS. Reports, at *Nisi Prius* and *Supreme Court*; and see 4 Dallas, *Appendix*, 12.

Bequest to a person, who was always called *Samuel*, by the testator, and whom he had nurtured, and educated from his infancy, by the name of *Samuel*, though in fact his name was *William*. Evidence was admitted to shew, that though the legacy was bequeathed to *Samuel*, it was in fact, intended for *William Powell v. Miffin's* administrator, 2 Dallas, 70.

Testator, having no *personal* estate, bequeathed several pecuniary legacies and the residue of his estate to his son. The land was sold by the sheriff to satisfy a judgment obtained against the son. Held, that nothing is given to the residuary devisee, but what remains after payment of legacies, which are a charge upon testator's real estate; and the proceeds of the sale were directed to be first applied to the payment of the legacies, and the residue to the judg-



1705. ment creditor. *Nichols v. Postlethwaite*, 2 Dallas, 131.

A bequest of "wearing apparel, household furniture, plate, linen, books, and every moveable whatsoever." Moveables must be confined to things of the same nature with those before specified, and will not include debts due to testator; by a different construction in this case, the rest of the will would have been destroyed; the testator having given several pecuniary legacies, and the residue of her estate to S. R. and having no real estate. *Jackson v. Vandersprengle's Executor*. 2 Dallas, 142.

R. B. devises, after payment of debts, a house to his wife for life, remainder to James and Susanna, his children. The widow and children, afterwards mortgage the property for the proper debt of James, the son, on which it was sold. The court ordered the surplus to be paid to the widow, on giving security, that her executors, or administrators, should account for it, after her death, to those in remainder.—And in case the security was not given, that the money should be paid to those in remainder, they giving security to pay the annual interest thereof, to the widow, during her natural life. *Bloomfield v. Budden*, 2 Dallas, 183.

In what case a devise of lands must be taken *cum onere*; and where the personal estate is liable to discharge a mortgage on the real; see *Ruston v. Ruston*, 2 Dallas, 243.

Devise of mortgaged lands to one for life, with power to dispose thereof by will, at her death; this is a *specific* devise, and the testator having other lands, and the whole of them being taken in execution to pay the debt, on a judgment on the bond accompanying the mortgage, they shall contribute according to the value of the several tracts. MSS. Reports. See 2 Dallas, 189, *Morris's Executors v. McConaughy*.

On a devise of lands in trust, the rents and profits to go to a married woman during life; unless it can be collected from the words of the will, that it was intended to her separate use, her husband is entitled to them. MSS. Reports, Supreme Court.

Devise as follows: "I give to H. now in Ireland, or his heirs, 200 acres of patented land, part of a patent for 300 acres, and the other undivided 100 acres I leave to B. according to the judgment of my executors in dividing the same," passes an estate in fee simple to both devisees, the land being wholly woodland, and unimproved.

So, a devise of an *Improvement*, in 1745, without words of inheritance, will vest the devisee with all the testator's interest in the lands. MSS. Re-

ports, Supreme Court—See 3 Dallas, 477.

It remains to be considered who are entitled to administration.

The English Statutes on this subject, reported to extend to *Pennsylvania*, and which govern the practice, are 31 Edward, 1 stat. 1. chap. 11. (year 1357.)—"Item, it is accorded and assented, that in case where a man dieth intestate, the ordinaries shall depute the next, and most lawful friends of the dead person intestate to administer his goods; which deputies shall have an action to demand and recover, as executors, the debts due to the said person intestate, in the king's courts, for to administer. And shall answer also in the king's court to other to whom the said dead person was holden and bound, in the same manner as executors shall answer. And they shall be accountable to the ordinaries, as executors be in the case of testament, as well of the time past, as the time to come."

21 Henry 8, chap. 5, (year 1529.) So much of this statute as is in force in this state, is in these words. "And in case any person die intestate, or that the executors named in any testament refuse to prove the said testament, then the ordinary, or other person or persons, having authority to take probate of testaments, shall grant the administration of the goods of the testator, or person deceased, to the widow of the same person deceased, or to the next of his kin, or to both, as by the discretion of the same ordinary shall be thought good, taking surety of him or them, to whom shall be made such commission, for the true administration of the goods, chattels and debts which, he or they shall be so authorized to minister; and in case where divers persons claim the administration as next of kin, which be equal in degree of kindred to the testator, or person deceased, and where any person only desireth the administration as next of kin, where indeed divers persons be in equality of kindred, as is aforesaid, that in every such case the ordinary to be at his election and liberty to accept any one or *no* making request, where divers do require the administration. Or where but one or more of them, and not all being in equality of degree, do make request, then the ordinary to admit the widow, and him or them only making request, or any one of them at his pleasure."

By the act for establishing Orphans' Courts, passed in 1713, (post. chap. 197,) where any letters of administration shall be granted, and no bond with sureties given, as the law in that case requires, such letters of administration are declared to be void, and the person



granting the same, and his sureties, shall be, *ipso facto*, liable to pay all such damages, as shall accrue to any person or persons by occasion of granting such administration. And the party to whom the same shall be so granted, may be sued as executor in his own wrong, and shall be so taken and deemed, in any suit to be brought against him for or by reason of his said administration, and the stat. 43 Eliz. (chap. 8,) which also extends to *Pennsylvania*, after reciting, "That it is often put in ure, to the defrauding of creditors, that such persons as are to have the administration of the goods of others dying intestate committed to them, if they require it, will not accept the same, but suffer or procure the administration to be granted to some stranger of mean estate, and not of kin to the intestate, from whom themselves, or others, by their means, do take deeds of gifts, and authorities by letter of attorney, whereby they obtain the estate of the intestate into their hands, and yet stand not subject to pay any debts owing by the same intestate, and the creditors for want of knowledge of the place of habitation of the administrator cannot arrest him, nor sue him; and if they fortune to find him out, yet for lack of ability in him to satisfy of his own goods, the value of that he hath conveyed away of the intestate's goods, or released of his debts by way of wasting, the creditors cannot have or recover their just and due debts, it enacts, "That every person and persons that hereafter shall obtain, receive and have any goods or debts of any person dying intestate, or a release or other discharge of any debt or duty that belonged to the intestate, upon any fraud, as is aforesaid, or without such valuable consi-

deration, as shall amount to the value of the same goods or debts, or near thereabouts, (except it be in, or towards satisfaction of some just and principal debt, of the value of the same goods, or debts to him owing by the intestate at the time of his decease,) shall be charged and chargeable as executor of his own wrong; and so far only as all such goods and debts coming to his hands, or whereof he is released or discharged by such administrator, will satisfy, deducting nevertheless to and for himself, allowance of all just, due and principal debts upon good consideration, without fraud, owing to him by the intestate at the time of his decease, and of all other payments made by him, which lawful executors and administrators may and ought to have and pay by the laws and statutes of this realm."

Letters of administration granted under seal, in a sister state, are a sufficient authority to maintain an action in this State. This has been uniformly understood, both before and since the Revolution; and such has been the practice without regard to the particular intestate laws of the State where they have been granted. But the act has never been considered to extend further than to the provinces in this country at the time it was passed, and *Greene v. Harris*, ante. pa. 33, turned upon that ground. There may be great inconveniences from the law, but it lies with the Legislature to remedy them. 1 Binney, 63. S. C. 4 Dallas, 292.

Husbands may demand, and have administration of the rights, credits, and other personal estate of *femes covert*, who die intestate, and recover and enjoy the same. Act of March 21st, 1772, (post. chap. 669,) sect. 5.

## CHAPTER CXXXVIII.

*An ACT for selling beer and ale by wine-measure.*

**WHEREAS** by a law of this province, for regulating the dimensions of casks, &c. it is enacted, among other things, That a barrel shall contain thirty-one gallons wine-measure. And whereas by another law of this province, for regulating of weights and measures, it is, amongst other things, enacted, That none shall sell beer or ale by retail, but by beer-measure, according to the standard of England; by reason whereof the retailers of beer and ale are obliged to sell the same by far greater measure than they buy it: For remedy whereof, *Be it enacted*, That from and after the publication of this act, all persons which now are, or which at any time or times hereafter shall be licensed to keep any tavern, inn, ale-house or victualling-house, within this province, shall sell beer and ale by

Taverns to  
sell beer or  
ale by wine-  
measure in  
their houses  
and beer.



1705. wine-measure to all persons as drink it in their houses, and by beer-measure to all such persons as carry the same out of their houses, under the penalty of ten shillings, to the use of the poor for every county where the offence is committed, any law, custom or usage, to the contrary in any wise notwithstanding.

II. *Provided always, and be it further enacted*, That the above recited law, entitled, *An act for regulating weights and measures*, and every part and proviso therein contained, except the last clause thereof, relating to selling beer and ale by beer-measure, shall be and remain in full force, any thing herein contained to the contrary notwithstanding.

Passed in 1705.—Recorded A. vol. I. page 184.

See ante. (chap. 73,) pa.19. The act for regulating the dimensions of casks, &c. herein recited, was repealed March 20th, 1810.

## CHAPTER CXXXIX.

*An ACT for the more easy and effectual collecting of the Proprietary's quitrents.*

XII. *AND be it further enacted*, That it shall and may be lawful for the Justices of each county in this province to grant writs of replevin in all cases whatsoever, where replevins may be granted by the laws of England, taking security as the said law directs, and make them returnable to the respective Courts of Common Pleas, in the proper county, there to be determined according to law,

Passed in 1705.—Repealed (in part) 27th November, 1779.—Recorded A. vol. I. page 185. (y)

(y) By an act of the 3d of April, 1779, (chap. 326,) it is provided that goods taken in execution or by distress, under the authority of the State, shall not be replevied. For the law respecting distresses and replevins in cases of rent; [and of the avowry, and making consuance, and how replevin bonds are to be taken by the Sheriff, see the act of March 21, 1772, (post. chap. 645,) and in what cases, and to what extent the Sheriff is liable for the sufficiency of the security, see 1 Dallas, 341, 349; 439, 440.]

The judicial writ, *de proprietate probanda*, cannot issue here in the case of a replevin. 1 Dallas, 156. The act in the text seems to have made a very considerable alteration in the proceedings in replevin: for, 1st. It does not recognize two kinds of replevin, one by plaint, and the other by writ: 2d. Replevins are made always returnable writs, and the party's appearance required on the return: and 3dly. They are directed to be there determined; that is, in the Court of Common Pleas. *Ibid.*

Before the goods are removed on a

replevin, the Sheriff ought to allow a reasonable time for the defendant to find security on a claim of property; which, in the practice of Pennsylvania, supplies the place of a writ *de proprietate probanda*. 1 Dallas, 225.

Goods taken in execution cannot be replevied; an action of trespass is the proper remedy for a wrongful levy. 1 Dallas, 312-13. [Replevin lies, in Pennsylvania, wherever a man claims goods in the possession of another. 1 Dallas, 156, and see 2 Dallas, 54. In replevin, bail for defendant, on a claim of property, are liable to the extent of the penalty of their bond. Where the goods are delivered to plaintiff, the Court will not give him leave to discontinue. Replevin will not lie for goods seized for non-payment of the city water tax. MSS. Reports, Sup. Court. Nor where plaintiff has no property in the thing replevied. See 4 Dallas, 342. See also the notes to chap. 645, post. Actions of replevin must be commenced within six years after cause of action. Act of March 27th, 1713, (post. chap. 196.)]

Writs of replevin grantable.... So by the 22d section of the act of May 23, 1722, (post. chap. 255.)

measure out of doors.

Repeal of a part of a former law.



## CHAPTER CXLII.

1705.

*An ACT about attachments. (z)*

WHEREAS the laws of this government have hitherto been deficient in respect of attachments, so that the effects of persons absenting are not equally liable with those of persons, dwelling upon the spot, to make restitution for debts contracted or owing within this province, to the great injury of the inhabitants thereof, and encouragement of such unworthy persons, as frequently, by absconding, make an advantage of the defect aforesaid: To prevent which inconvenience, *Be it enacted*, That the Justices of the respective county Courts within this province shall, and are hereby impowered to grant writs of attachment; which attachments so granted shall be duly served, by the respective Sheriffs or Coroners, as the case may require, upon the goods and chattels of such person or persons against whom the same shall be awarded, in whose hands or possession the same shall be found, returnable to the next succeeding Court respectively, where the party may proceed to trial, and shall have judgment granted the third court after the effects are seized.

Justices to  
grant writs  
of attach-  
ment.

(z) By an act of the 2d of March, 1722-3, (post. chap. 263,) the proceedings in cases of *domestic attachments* against absconding debtors are regulated; but it is provided by the 12th section, that the goods or effects of any person, *not an inhabitant of this province*, may still be attached according to the directions of the act in the text. By an act of the 22d August, 1752, (post. chap. 399,) Justices of the Peace are empowered under certain regulations, to issue writs of *domestic attachment* for any debt not exceeding £ 5. By an act of the 22d of January, 1774, (chap. 691,) the power of issuing *domestic attachments* is extended to the case of debtors, who confine themselves to their houses, or conceal themselves elsewhere for six days, with the design to defraud their creditors. By an act of the 28th September, 1789, (chap. 1434,) provision is made for compelling the garnishee in *foreign attachment* to answer interrogatories, as to the effects of the defendant in his hands; and for introducing a *capias* clause into the writ against the garnishee, in case he is not an inhabitant of the proper county, or is about to depart.

The consignee of goods has a lien upon them, for any debt due to him from the consignor, in exclusion of the plaintiff in a *foreign attachment*. 1 Dallas, 3.

Property of a sister state is not liable to an attachment in Pennsylvania, for a debt due from such state to an individual. 1 Dallas, 77, *in note*.

What constitutes an *inhabitant*, so as

to render the party an object of the *domestic attachment*, and not of the *foreign attachment*. 1 Dallas, 152, 158.

The Court will enquire into the plaintiff's cause of action on a *foreign attachment* as in the case of a *capias*. 1 Dallas, 154, 158, 218, 294. But the application must be made to the Court; and at the first term. *Miltenberger v. Lloyd*, in the Common Pleas, September term, 1790. [2 Dallas, 79, and motion to dissolve a foreign attachment must be made at the first term. *Ibid.*]

Judgment in a *foreign attachment*, obtained in *Massachusetts*, adjudged not to be conclusive. 1 Dallas, 261.

A *foreign attachment* does not lie to attach money paid into the hands of the Prothonotary, in satisfaction of a previous judgment in another suit. 1 Dallas, 354.

Refusing to admit the defendant in a *foreign attachment* to produce his evidence before the Jury of Inquiry, is not a sufficient reason for setting aside the inquisition. 1 Dallas, 375.

In a *foreign attachment*, a shallop being attached, it was ordered to be sold, as a chargeable commodity. 1 Dallas, 379.

If the plaintiff does not prove more in the hands of a garnishee, than he admits by his plea to the *scire facias*, or his answer upon interrogatories, the plaintiff must pay the costs; but if more is proved, then the costs must be paid by the garnishee. *Walker et al. v. Wallace et al.* in the Supreme Court, September term, 1790. 2 Dallas, 113. (*Note to former edition.*)



1705.

Proceedings  
on attach-  
ment.

**II.** *And be it further enacted,* That the person or persons, whose goods or effects are so attached, shall be defendant in the attachment; and the person, in whose hands or possession the same goods or effects are attached, shall be called the garnishee, and shall be obliged to appear in court at the return of the attachment, and answer what shall be objected against him, and abide the judgment of court, and shall be allowed, out of the effects attached, reasonable satisfaction for his attendance. And that the manner of executing writs shall be by the officer's going to the house, or to the person in whose hands or possession the defendant's goods or effects are supposed to be, and then and there declare, in the presence of one or more credible persons of the neighbourhood, that he attacheth the same goods or other effects: From and after which declaration the goods, money or effects, so attached, shall remain in the officer's power, and be by him secured, in order to answer and abide the judgment of court in that case; unless the garnishee will give security therefor. And if the plaintiff in the attachment obtain a verdict, judgment and execution, for the money and goods in the garnishee's possession, yet the defendant in the attachment may, at any time before the money be paid, put in bail to the plaintiff's action, upon which the attachment is grounded; whereby the garnishee will and shall be immediately discharged. And if an attachment shall be made for goods or effects, and the garnishee plead he had no goods or effects in his hands at the time of the attachment, or at any time after, and the plaintiff prove the contrary, the jury in such case, being satisfied that the proof is plain and full, shall find for the plaintiff, and say what goods or effects they find in the garnishee's hands, whereupon judgment shall be entered, that appraisement may be made of the said goods or effects so found by the jury, and a precept shall be granted, requiring the Sheriff to get the same appraised; and if the garnishee will not produce them, then execution shall be forthwith awarded for the value thereof, according to appraisement; to be levied upon the lands, tenements, goods and chattels of the garnishee.

Attachments  
against resi-  
dents, when  
to be granted.

**III.** *Provided always,* That no writ of attachment shall hereafter be granted against any person or person's effects, but such only as at the time of granting such writs are not resident or residing within this province, or are about to remove or make their escape out of the same, and shall refuse to give sufficient security to the complainant for his debt or other demand, before he depart the said province.

Plaintiff to  
find surety to  
restore the  
goods or ef-  
fects, or va-  
lue thereof.

**IV.** *Provided also,* That after judgment obtained by the plaintiff, upon any attachments against non-residents, the plaintiff shall, before sale, and after execution is awarded, find security, who shall undertake for the plaintiff, that if the defendant in the attachment shall, within a year and a day next following, by himself or attorney, come into court, and disprove or avoid the debt recovered by the plaintiff against him, or shall discharge the same, with costs, that then the plaintiff shall restore to the defendant the goods or effects, or value thereof, by the plaintiff attached and condemned, or so much thereof as shall be disproved or discharged, or else that they shall and will do it for him,

Passed in 1705.—Recorded A. vol. I. page 191. (a)

(a) Almost the whole of the act of the act of 22d January, 1774, (mention-  
2d March, 1722-3, and the section of ed in the beginning of the note to the



former edition, are repealed, and supplied by the act of Dec'r 4th, 1807, (post. chap. 2873,) and by the same act, the act of 22d August, 1752, is recognized and confirmed, and the jurisdiction of Justices, in cases of attachments, extended to one hundred dollars.

A foreign attachment will not lie against an inhabitant of the State, though avowing an intention to emigrate, and actually on his journey for that purpose. He must still be considered as an inhabitant. If he clandestinely withdraws, or secretes himself, he becomes liable to the domestic attachment. But having once been an inhabitant will not protect him forever from a foreign attachment, where he has notoriously emigrated from the State, and settled elsewhere. *Lyle v. Forman*, 1 Dallas, 480.

As, where one has lived and traded here for some years, and then sails as a supercargo to the West-Indies, carrying with him four fifths of his property, and making a partial assignment of one fifth for the benefit of his creditors here; and there engages in new business, and is wholly silent in his letters, about his return, for nine months, his property is subject to foreign attachment, though he expressed an intention, when he sailed, of returning in 12 or 18 months at furthest. MSS. Reports, Sup. Court.

A foreign attachment will not lie against executors. 2 Dallas, 73, 97.

Debts may be attached, though only payable at a future day. It has been the uniform construction of the act of Assembly, that such debts were affected by the attachment. *Walker v. Gibbs*. 2 Dallas, 211. But the garnishee is not compellable to pay the money before it is due. S. C. MSS. Reports.

The answer of the garnishee to the interrogatories, form a part of the record, and the Court will judge from the whole, (MSS. Reports,) and the fact of a debt due to defendant, being admitted in the answers of the garnishee, the Court may give judgment on motion. S. C. 2 Dallas, 212.

A judgment in a foreign attachment is not removeable by *certiorari*; otherwise of the *scire facias* issued upon it. MSS. reports, and 2 Dallas, 211, and a *scire facias* upon a judgment obtained in the Supreme Court against a Garnishee, is to be brought there, though judgment had been obtained in the common pleas against the original debtor. 2 Dallas, 212.

The defendant advertised a ship for freight to *Madeira*. The plaintiff shipped flour on board; after which, and before the ship sailed, a third person attached her for a debt due to him from

*Pintard*, the owner of the vessel, for whom the defendant acted as agent. The voyage was, by this means, broken up, and the plaintiff's flour, being re-landed, was sold to a loss.

1705.

It was ruled by the Court, that the defendant, (the agent,) was not answerable for the damages sustained by the plaintiff. *Joyce v. Sims*, 2 Dallas, 223.

Foreign attachments, since the act of 1705, have been governed by the same rules as in *London*, as nearly as convenience, and the words of the act would admit MSS. Reports, Sup. Court. See 2 Dallas, 279.

A debt in suit may be attached; and a debt due to partners may be attached by a separate creditor of one of the partners, who shall recover a moiety of the amount. *McCarty v. Emlen*. 2 Dallas, 277.

A share of bank stock attached, cannot be transferred upon a judgment in foreign attachment. MSS. Reports, Sup. Court.

On a contract for lands in *New York*, between *D.* and *B.* promissory notes, dated at *Philadelphia*, are given by *B.* payable to the order of *H. K.* at the bank of the United States, and delivered to *D.* indorsed in blank, by *H. K.* at *New York*, (where the custom of merchants prevails as to notes), a foreign attachment taken out, by a creditor of *D.* in *Pennsylvania*, while he held the notes, shall not prevent a subsequent *bona fide* holder of the notes, without notice, from recovering against *B.* *Ludlow v. Bingham*, 4 Dallas, 47.

A fund, remitted to pay particular creditors, cannot be attached. 4 Dallas, 279.

The general rule is, that a Garnishee is not liable for interest, while he is restrained from the payment of his debt, by the legal operation of a foreign attachment. But, if there is any fraud or collusion; or any unreasonable delay occasioned by the conduct of the Garnishee himself, such cases will form exceptions to the general rule. *Fitzgerald v. Caldwell*, 2 Dallas, 215.

A rule to take depositions, granted before the return of a *scire facias* in a foreign attachment on notice to the Garnishee. 2 Dallas, 78.

If the original debtor sues the Garnishee, after an attachment executed in his hands, he may plead the attachment in abatement; and plaintiff may reply that it is kept on foot by fraud, and put that matter in issue to be tried.

If such money has been paid by the Garnishee, on a judgment, or execution has been executed, he may plead the condemnation in foreign attachment,



1705.

and this will be an effectual bar for the amount.

*MSS. Reports, Supreme Court.*

But if the Garnishee in a foreign attachment, pay over to the plaintiff the debt attached, without being compelled by due process of law, and without requiring the stipulation ordered by act of assembly, it will not discharge him from the original debt. 1 Binney, 25.

The security given by the plaintiff as to disproving the debt within a year and day, must be in the court where judgment was entered in the original action. *MSS. Reports, Supreme Court.*

A plea in abatement by Garnishces, on a *scire facias*, on a foreign attachment, that one of the partners was not named, is not a good plea. *MSS. Reports, Supreme Court.*

Where one tract of land is attached under a foreign attachment, and so returned, the Court cannot even by rule, substitute a different tract. *Lessee of Steinmetz and Bell v. Nixon. Circuit*

Court at Bedford, November 1801. *MSS. Reports.*

In a foreign attachment, the plaintiff may be called upon to shew his cause of action, though after the third Court. Fictions of law shall work no wrong. *MSS. Reports, Supreme Court.*

A foreign attachment was set aside, a judgment having been obtained for the demand in another state, and an execution levied thereupon. *MSS. Reports, Supreme Court.*

Upon the plea of *nulla bona* to a *scire facias* against a Garnishee, the jury must find the *specific* goods in the Garnishee's hands; a verdict, finding goods of a certain value in the defendants' hands is bad. But if they find the goods, they may also find their value, to save the necessity of a special inquest. 1 Binney, 481. See sect. 2, of the act in the text.

For cases of domestic attachment, see the notes under the particular acts respecting attachments against absconding creditors.

## CHAPTER CXLV.

*The LAW about seven years quiet possession. (b)*

Quiet possession where to give right.

*BE it enacted*, That seven years quiet possession of lands within this province, which were first entered on upon an equitable right, shall forever give an unquestionable title to the same against all, during the estate whereof they are or shall be possessed, except in cases of infants, married women, lunatics, and persons not residing within this province or territories.

Passed in 1705.—Recorded A. vol. I. page 195.

(b) For an act limiting the period for commencing certain actions, see *post.* chap. 196, which is extended to actions on promissory notes by a subsequent law, *post.* chap. 207. On the 26th of March, 1785, (chap. 1134,) an act

was passed for the limitation of actions to be brought for the inheritance or possession of real property, or upon penal acts of assembly. (*Note to former edition.*)

## CHAPTER CXLVII.

*An ACT against mixing and adulterating strong liquors.*

Penalty on selling adulterated strong liquors.

**FOR** the preventing of fraud in mixing and adulterating rum, brandy, or such like spirits, *Be it enacted*, That if any person within this province shall presume to sell rum, brandy, or such like spirits, that is adulterated or mixed with water, or any other liquor, knowing the same to be so adulterated or mixed, being convict thereof, by one or more credible witnesses, he or she shall, for every such offence, forfeit the said rum, brandy or spirits to be exposed to

sale, and pay treble the value thereof; one moiety to the support of government, and the other moiety or half to him that shall discover and prosecute the same. 1705.

Passed in 1705.—Recorded A. vol. I. page 196.

## CHAPTER CXLIX.

*An ACT for county seals, and against counterfeiting hands and seals.*

*BE it enacted*, That there shall be a county seal in every county of this province, for the use of each county; and if any person, within the said province, shall be convicted of counterfeiting the hand or seal of another, with intent to defraud, such person shall suffer three months imprisonment, at hard labour, and be fined treble the value he or she shall have defrauded, or attempted to have defrauded, thereby, to the use of the party wronged; and whosoever shall counterfeit the privy or broad seal of the said province, being convicted thereof, shall suffer seven years imprisonment as aforesaid, and be fined, at the discretion of the court where such party shall be convicted, in any sum not exceeding one hundred pounds, to the support of government. Penalty on counterfeiting hand or seal.

Passed in 1705.—Recorded A. vol. I. page 197. (c)

(c) A law of a similar title was passed in 1700, and recorded in book A. vol. 1, page 11, which was repealed by the king and council on the 7th day of February, 1705.

The first act passed under the existing constitution, entitled "An act to declare and establish the seals of this commonwealth," constituted the seal, known by the name of the state seal, lately in the custody of the supreme executive council, the state seal, to be affixed to all patents, &c. and also the lesser seal lately in custody, as aforesaid; and declared them to be the great and less seals of the commonwealth. This act was passed January 8th, 1791, (chap. 1510.) The device of the broad seal of the province consisted of the armorial bearings of the family of the late proprietor. But there had been no description on record of the great seal of the commonwealth.

Therefore, by an act passed March 2nd, 1809, entitled "An act to perpetuate the great seal of this commonwealth;" reciting that it was necessary to renew the same; and that as there was no description on record thereof; and as it was proper that it should be particularly described and established, that it may hereafter be more fully known and recognized—The secretary of the commonwealth was authorized and directed to record a description thereof in his office, that the same may be made perpetual.

In pursuance of the foregoing act, the secretary of the commonwealth, on the 1st of July, 1809, described and recorded the seal of the state in his office.

See the note to the act against defacers of charters, ante. chap. 16, page 4.

## CHAPTER CL.

*An ACT for defalcation.*

*BE it enacted*, That if two or more, dealing together, be indebted to each other upon bonds, bills, bargains, promises, accounts, or the like, and one of them commence an action in any court of this

Persons sued upon bond, bill, &c. may plead payment of part



1705. province, if the defendant cannot gainsay the deed, bargain or assumption, upon which he is sued, it shall be lawful for such defendant to plead payment of all or part of the debt or sum demanded, and give any bond, bill, receipt, account, or bargain, in evidence; and if it shall appear that the defendant hath fully paid or satisfied the debt or sum demanded, the jury shall find for the defendant, and judgment shall be entered, that the plaintiff shall take nothing by his writ, and shall pay the costs. And if it shall appear that any part of the sum demanded be paid, then so much as is found to be paid shall be defalked, and the plaintiff shall have judgment for the residue only, with costs of suit. But if it appear to the jury, that the plaintiff is overpaid, then they shall give in their verdict for the defendant, and withal certify to the court how much they find the plaintiff to be indebted or in arrear to the defendant, more than will answer the debt or sum demanded, and the sum or sums so certified shall be recorded with the verdict, and shall be deemed as a debt of record; and if the plaintiff refuse to pay the same, the defendant, for recovery thereof, shall have a *scire facias* against the plaintiff in the said action, and have execution for the same, with the costs of that action.

of the whole debt, and give their accounts against the plaintiff in evidence.

Proceedings on such suit.

II. *Provided always*, That in all cases where a tender shall be made, and full payment offered by discount, or otherwise, in such specie as the party by contract or agreement ought to do, and the party to whom such tender shall be made doth refuse the same, and yet afterward will sue for the debt or goods so tendered, the plaintiff shall not recover any cost in such suit.

The report of referees to have the same effect as a verdict.

III. *Provided also*, That in all cases where the plaintiff and defendant, having accounts to produce one against another, shall, by themselves, or attornies or agents, consent to a rule of court for referring the adjustment thereof to certain persons, mutually chosen by them in open court, the award or report of such referees being made according to the submission of the parties, and approved of by the court, and entered upon the record or roll, shall have the same effect, and shall be deemed and taken to be as available in law, as a verdict given by twelve men; and the party, to whom any sum or sums of money are thereby awarded to be paid, shall have judgment, or a *scire facias*, for the recovery thereof, as the case may require, and as is herein before directed concerning sums found and settled by jury, any law or usage to the contrary of this act, in any wise notwithstanding. (*d*)

Passed in 1705.—Recorded A. vol. I. page 197. (*e*)—See note in page 51.

(*d*) There are four species of awards: *First*, those made by mutual consent, in pursuance of arbitration bonds, entered into out of court; *secondly*, those which are made in a cause depending in a court of law or equity, upon the consent of the parties to refer the matter in variance (which are awards at common law;) *thirdly*, those which are made under a rule of court by virtue of the statute of 9 and 10 W. III. chap. 15; and, *fourthly*, awards by the act of assembly in the text. 1 *Dal-*

*las*, page 314. Perhaps to this enumeration might be added the report of auditors, appointed by virtue of the act of the 3d of April, 1781, post. chap. 924.

From this source of judicial references a variety of decisions have flowed, which are susceptible of the following classification: 1st. Cases respecting the appointment of referees, notifying and hearing the parties. 1 *Dallas*, pages 81, 161, 251. Cases respecting clerical errors in making out the rule of reference. 1 *Dallas*, 293, 379. Cases respecting



the time allowed for striking off the rule of reference, or for moving to set aside the award. 1 Dallas, 312, 347, 349, 430. Cases in which an award will be set aside. 1 Dallas, 83, 129, 145, 187, 293, 313, 355, 486. Cases in which an award will not be set aside. 1 Dallas, 81, 119, 145, 161, 173, 188, 364, 420.

In the case of *Respublica v. Mitchell* (in the Supreme Court, January term, 1789,) interest was added by the court to the sum awarded against the state, although the referees had not expressly given it in their report. 2 Dallas, 101. (*Note to former edition.*)

For other cases on awards since reported, see 2 Dallas, 157; 4 Dallas, 71, 120, 222, 232, 271, 284, 298, 300, (note 1.) The law on this subject, with a reference to manuscript cases, will be arranged under the laws relating to arbitrations. See 1 Binney, 43, 59, 109, 458, 461.

(*e*) By the 10th section of the act of 14th February, 1729-30, (post. chap. 315,) for the relief of insolvent debtors, where there are mutual debts, between the debtor, or debtors, and his, her, or their creditors; or if either party sue or be sued, as executor or administrator, where there are mutual debts between the testator or intestate, and either party, one debt may be set against the other, and such matter may be given in evidence on the general issue, or pleaded in bar, as the nature of the case shall require; so as, at the time of the pleading the general issue, where any such debt of the plaintiff, his testator, or intestate, is intended to be set off in evidence, notice shall be given of the particular sum or debt so intended to be insisted on, and upon what account it became due; or otherwise such matter shall not be allowed in evidence upon such general issue.

This section, together with the act in the text received a full consideration, both in the argument of counsel, and the judgment of the court, in the case of *Primer v. Kuhn*. 1 Dallas, 452. And it was held, that the assignee of a bond, which had been entered into by an insolvent debtor before his discharge, is entitled to a defalcation of the amount in an action brought against him by the obligor, (the insolvent debtor) to recover a debt contracted by such assignee with the insolvent debtor, subsequent to his discharge. The act in the text says, that if two or more dealing together, be indebted to each other upon bonds, &c. when an action is commenced, the defendant may plead payment, and give his bond, &c. in evidence against the plaintiff's demand. No doubt could be

reasonably entertained but that the obligee could have defalked the bond in question, and having legally assigned all his right and interest, why should not the assignee be entitled to the same advantage, since the act for the assignment of bonds, (post. chap. 207,) has placed him on the same footing?

And the last section of the act in the text, provides, that where a plaintiff and defendant have accounts to produce one against another, they may refer them, and the report of the referees shall have the effect of a verdict; now, although the words are confined to the case of accounts, yet the construction of the act has liberally extended the right and benefit of such a reference, to every other cause of action.

But a creditor of an insolvent debtor, is not entitled to a set-off, in an action brought by an insolvent debtor's factor, for goods sold by the factor to the creditor; as, where L. an insolvent debtor, after his insolvency, deposited with the plaintiff, an atlas to be sold, and the defendant purchased it at plaintiff's store. The defendant who was one of L.'s creditors, discovering that the atlas had belonged to L., refused to pay for it to the plaintiff, insisting that he had a right to set off the debt against the price. But the court held, that the plaintiff, the factor, had a right to recover. *Boinod v. Pelosi*. 2 Dallas, 43.

Unliquidated damages in covenant, sounding in tort, cannot be defalked, under the plea of payment, in a suit on a bond.

The evidence offered, was, that the bond was given for the payment of the consideration money of a tract of land and mill, which plaintiffs had sold to defendants, reserving in the deed a right to swell and raise the water, so as not to injure the mill; but that the plaintiffs had raised the water, so as to injure the mill.

*By the Court.* The question is, whether, under the liberality of the practice of our Courts of Justice, such evidence is admissible? To decide in the affirmative, the case must either be embraced by the general provision of the act for defalcation, or by the 39th rule of the Supreme Court. Now, although our act of assembly extends further than the British Statutes of set-off, we do not think it comprehends a defalcation of the nature contended for: and, though the 39th rule of the court, ascertains what evidence is admissible on the plea of payment, (*want of consideration, that the deed was obtained by fraud, or by a suggestion of a falsehood, or suppression of the truth,*) it contains nothing descriptive of the present circumstan-



1705. ces, where there was a good consideration for the bond, though the defendants have been injured by the subsequent conduct of the plaintiffs.

If, however, the defendants would otherwise be without a remedy, we should be solicitous, by any rational construction of the law, to admit the evidence; but it is clear, that they may have an adequate redress for the wrong which they have suffered, in a form of action suited to their case. *Kachlin et al. v. Mulhollan et al.* 2 Dallas, 237.

And in *Sweitzer v. Garber*, at *Nisi Prius* in *Cumberland*. Where the vendor had interrupted the vendee in the enjoyment of the land sold; vendee was not allowed to give the matter in evidence, in an action brought by vendor, to recover the purchase money. *Ibid.* 239 in note.

But in a suit by executors against executors, where due notice has been given; a demand, in consequence of the plaintiffs, as executors, selling lands held in partnership between the two testators, by agreement, may be given in evidence by way of set-off; otherwise where such notice has not been given, nor the matter pleaded!

Thus in the case of *John Boyd's Executors v. William Thompson's Executors*, *Westmoreland*, May 1797. In an action on the case for £.300 for money had and received for the use of *John Boyd*, and a 2nd count for other £.300 on an *insimul computassent* by the parties in their capacity of executors; on the pleas of *non assumpsit* and *payment*, the defendants offered in evidence an agreement between the testators *Boyd* and *Thompson*, that four certain tracts of land were held by them in partnership; and further offered to prove, that plaintiff, after her testator's death, had sold two of the tracts, as surviving executor, and received the consideration money, of which one moiety belonged to *Thompson's* estate, and that plaintiff was consequently accountable for said moiety to defendants.

This evidence was objected to, because no notice had been given of a set-off, and for that unliquidated damages could not be set-off.

The Court, however, thought it might well have been given in evidence, if it had been pleaded, or proper notice given. The debt claimed, and counterdemand; respect the representative character of the parties. Our defalcation act has often been said to be more comprehensive than the British Statutes of 2 Geo. 2. c. 22, and 8 Geo. 2. c. 24, though it never could have intended that all kinds of damages under covenants should be set-off, and it has

been ruled accordingly in *Kachlin v. Mulhollan*.

In *England*, where a debt intended to be set-off, accrues by reason of a penalty in a specialty, it shall be pleaded in bar, and the sum truly due must be shewn in such plea by the statute. Unliquidated, uncertain damages there cannot be pleaded by way of set-off, according to *Cowp.* 57.—But sums in the nature of stipulated damages, for breach of any agreement, may be so pleaded. The demand insisted on, in this case, not having been pleaded, or notice given of the set-off, the court is bound by the positive words of the 10th section of the act of 14th February, 1729-30, and cannot admit the set-off in evidence. MSS. *Nisi Prius* Reports.

Notice of a set-off should be certain and particular; and if the set-off is to be proved by the acknowledgment of the party, it should be so expressed in the notice. *Beatty v. Smith*, *Circuit Court. Franklin*, September, 1804. MSS. Reports.

And where it is barred by the act of limitations, it cannot be received in evidence on a mere notice of set-off. But if it be pleaded in bar, the defendant is not bound to give written notice of the set-off; and plaintiff should reply the act of limitations, if the set-off demand was barred thereby.

Thus, in debt, the plea was payment, with leave to give the special matters in evidence, *with notice of set-off*, replication, *non solvit* and issue.

The defendant offered to shew in evidence, that his son, during his minority, had performed certain services for plaintiff, for ten months; and claimed a reasonable compensation therefor.

The plaintiff, denying that any allowance for such services, was ever in the contemplation of the parties, contended, that supposing it to be a real debt, it was barred by the act of limitations, and could not now be set-off: and cited *Buller*, N. P. 176. The services alleged to have been rendered, were in 1784, and the bond on which the suit was brought was dated 26th December, 1785, subsequent to the transaction, and had been previously renewed. That if the defendant meant to avail himself of the leave to give the special matter in evidence at the trial of the cause, he ought, under the 37th rule of the practice of the Court, to have given notice in writing, at least ten days before, of the special fact or matter on which he intended to rely by way of defence: and on the foot of mutual dealings, he ought under the 38th rule, to have given the like written notice, and at the same time furnished the plaintiff



with a copy of his account. And not having complied with these requisites, he was precluded from giving the intended evidence.

*By the Court.* If the defendant had pleaded the set-off specially, he would have been under no necessity to have given any other written notice. It would then have been incumbent on the plaintiff to have replied the act of limitations. Here the set-off is not pleaded, and under the case cited, the evidence may be well objected to, on the mere notice of set-off. It was accordingly over-ruled. *Jacks v. Moore*, Lancaster, May 1794, before *McKean, C. J.* and *Yeates, J.* at *Nisi Prius*. MSS. Reports.

*William Robinson*, assignee of *Alexander Armstrong v. Benjamin Beall & Henry Russell*.

*Circuit Court, Fayette county, October 1801, before Yeates & Smith, Justices.*

This was a case stated for the opinion of the Court.

On the 20th of July, 1800, the present suit was commenced on a bond given by the defendants to *Armstrong*, dated May 6th, 1799, and duly assigned to the plaintiff, June 30th, 1800.

The plea was payment with notice of a set-off; and defendants claimed a defalcation of a joint bill by *William Cameron*, (since deceased,) and *Alexander Armstrong* aforesaid, to *Andrew Baine*, for the payment of £. 36. 5. 6. on the 9th Oct'r, 1799, and duly assigned to *Benjamin Beall*, on the 28th Feb'y, 1800. *Cameron*, the co-obligor, died before the times of either of the assignments.

The question was, whether the bill in the hands of *Beall*, the defendant, ought not to be allowed as a set-off against the bond, in the hands of *Robinson*, the plaintiff?

It was objected, that the bill intended to be defalked, was joint, and between other parties—that the demands must be mutual, and such as are due in the same right, *Buller*, 175. No set-off is allowed where the demand is in *auter droit*. 1 *Vez.* 208. There are exceptions in the case of surviving partners—A debt due to a defendant, as a surviving partner, may be set-off against a demand on him in his own right, because the defendant might have declared against the plaintiff for this demand, and also for any sum due to him separately, if any such had been due.

It was answered, that the plaintiff by the assignment, took the bond subject to all the equity and defalcation, which it carried in the hands of the obligee. *Cameron* died before his bill was assigned in February, 1800, and the remedy

by *Beall*, the assignee, was transferred solely as against *Armstrong*; the joint nature of the bill was destroyed by *Cameron's* death; and *Beall* possessing this demand against *Armstrong* antecedent to the assignment of the bond by the latter to the plaintiff, must be entitled to a defalcation. *Armstrong's* assignment would not put *Beall* in a worse situation than he was before.

*By the Court.* There can be no doubt, but, circumstanced as this case is, the bill is a good set-off against the bond. MSS. Reports.

And, in the case of *Humphries v. Blight's assignees*, in the Circuit Court of the United States, for the Pennsylvania district, it was held, that a commission of bankruptcy is legal notice to affect a subsequent assignee of a promissory note with the statute right of set-off. 4 Dallas, 370.

In *Cramond & others*, executors of *Cay*, surviving partner of *Clow v. the Bank of the United States*, which was a *scire facias* obtained in Sept'r, 1801, against the defendants, as garnishees in a foreign attachment against *James Brown*. The case was, that on the 19th of August, 1793, *Clow & Cay*, partners in trade, indorsed a note drawn by *H. Darrach*, bearing that date for the sum of \$ 852, which was discounted by the defendants, and the amount paid to the indorsers. Before the note became due, the drawer and indorsers died, and notice of non-payment was duly given to the executors of the surviving partner, *Cay*.

On the 11th of April, 1793, *Clow & Cay* laid a foreign attachment on the property of a certain *James Brown*, in the hands of the defendants, and judgment was obtained thereon, on the 14th of June, 1794, in the names of the present plaintiffs, as executors of *Cay*, surviving partner; and after a writ of inquiry, there was final judgment for plaintiffs for £. 255,43. 2. 3. A *scire facias* then issued against the defendants as garnishees, returnable to September term, 1797, and upon the 10th of Sept'r, 1801, a verdict was found for the plaintiffs for \$ 3354, and on the same day a judgment nisi.

The defendants, as garnishees of *J. Brown*, were in possession of 13 shares of bank stock, and of the dividends thereon, arising and accruing since the 1st July, 1801, subject to this attachment. They had received payment of \$ 284. 27 cents, being a dividend of *H. Darrach*, the drawer of said note.

The question for the opinion of the Court, was, whether the defendants in this action were entitled to set off



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against the demand of the present plaintiffs, the balance due on said note with interest ?

But the set-off was not allowed. It was said, that set-offs were agreeable to reason and justice ; and in actions by or against executors, where there are mutual debts, they are allowed with great reason. But *this mutuality of debt is the essential circumstance in a set-off* ; and was there any thing of the kind in this case ? The debt of the bank was due to *Brown* ; it owed nothing to *Clow & Cay* at the time of their death. The object of a foreign attachment is none other than to get the party's appearance by attaching his property, and it would produce great confusion to turn it to the purpose of settling collateral accounts like this. To allow the defendants to pay themselves in this way, would be an injustice to the other simple contract creditors of *Clow & Cay*, whose right to this debt from *Brown* to *Clow & Cay*, vested in them generally upon the death of the latter, and could not be diminished by the subsequent act of the defendants ; upon this point a majority of the Court relied, in giving judgment for the plaintiffs. 1 Binney, 64.

The assignee of a policy of insurance takes it liable to all defalcations to which it was subject before the assignment : and in a suit by the assignee, the underwriters may set-off a debt due by the assignor at the time of effecting the policy, though it be an *open* policy, and the claim for a *partial* loss.

Thus, in the case of *Rousset v. the Insurance Company of North America*. The case for the opinion of the Court was, in substance, that the defendants, on the 28th Jan'y, 1799, underwrote a policy of insurance in the name of *B. Nones*, for \$ 4000, on the brig *Charlotte*, at and from *Philadelphia* to *Wilmington, N. C.* and at, and from thence to *Martinique*. At the time of effecting the insurance, *Nones* was the true owner of the *Charlotte*, and she was duly registered in his name. He continued to own her until the 28th of Nov'r, 1799, when he sold her to the plaintiff. On that day, he executed a bill of sale of the brig, and delivered into the hands of the plaintiff, the above policy of insurance, as his own, and for his own use and benefit. And on the 21st Jan'y, 1800, the policy was formally assigned by indorsement. In the month of March, 1799, the brig sailed upon the voyage insured, and during the prosecution of it, suffered damage from stress of weather, which was repaired in the *West-Indies*, during the winter of 1800, and to recover for which this action was brought ; but at the time of effecting the policy, and ever since, *Nones* was indebted to the

defendants for *premiums* on insurance made by them for him on other vessels and cargoes, and on the same vessel for a former voyage ; and he was insolvent at the time he sold the vessel, and at the commencement of this suit. The question for the Court was, whether the defendants had a right to set-off against the plaintiff's demand for a partial loss, so much of the debt due to them by *Nones*, as was equal thereto.

*Tilghman, C. J.* after stating the case, said, The Court considered this point as having been settled in the case of *Gourdon*, (for the use of his assignees,) v. the same insurance company tried in *bank*, at March term, 1802. The charge of *C. J. Shippen*, delivered with the approbation of all the Judges, established a principle decisive of the question now before us ; that is to say, that a policy of assurance was to be considered as other *choses in action*, which are not assignable by the common law, but only in equity ; and consequently the assignee takes it liable to all defalcations, to which it was subject before the assignment. Upon the authority of that case, therefore, the Court are now of opinion, that the defendants are entitled to the set-off for which they contend. 1 Binney, 429. S. C. 4 Dallas, 291.

*Gourdon's* case above cited, will also be found in the note, 1 Binney, 430, and affords considerable light to the principles of set-off, as against assignees.

The Court held, that bills of exchange, and notes payable to order in the city of *Philadelphia*, are properly negotiable paper, after such notes have been indorsed *bona fide* in the course of trade. The effect is, that the holder may sue in his own name, and may recover the money from the drawer without any embarrassment whatever on account of any counter demands, or want of consideration, as between the drawer or maker and the payee.

Bonds may be assigned by our law, so as to enable the assignee to bring an action on them in his own name, but without the other qualities of negotiable paper ; that is, if the obligor had before the assignment any just demand against the obligee, which he could have set-off against him if there had been no assignment, he may set-off the same against the assignee, who takes the bond subject to all the equity that it was subject to before the assignment. This rule is, however, subject to one qualification. If the assignee, when he is about to take the assignment, calls upon the obligor to know whether the whole money is due, and the obligor tells him it is a good bond, but is entirely silent as to any claim of his against



the bond, he can never after open his mouth against the demand of the assignee. See 1 Dallas, 23.

A policy of insurance is not assignable in its nature; but it is assignable in equity. It is not like a bill of lading, which is assignable in its nature, and the assignment of which vests the absolute property in the goods assigned in the assignee. A policy of insurance, in its qualities, resembles a bond for payment of money at a future day, more than any other instrument. They are both *choses in action*. It is only by a particular act of assembly that the assignee may bring the action in his own name, if the assignment be sealed and delivered in the presence of two subscribing witnesses; but the law does not prevent the obligor from showing a want of consideration, or setting off any counter demand against the obligee.

It is before mentioned, that it is incumbent on the assignee of a bond to call on the obligor to know the quantum of the debt due; it is likewise incumbent on the assignee of a policy to call upon the underwriter, and to inform him before any account of a loss, and to inquire if he has any thing to set-off against the policy. If the underwriter has this notice, and either makes no objection and claim, or is totally silent as to any claim, the assignee of the policy is in the same condition as the assignee of a bond under like circumstances; and both are entitled to recover, notwithstanding the underwriter in the policy, or the obligor in the bond, should afterwards discover that he had a counter demand; and their mouths are stopped by their acquiescence or silence; otherwise, in both cases, it would lead to a deception.

See the act to devise a particular form of promissory note, not liable to any plea of defalcation or set-off, passed Feb'y 27th, 1797, (post. chap 1909.) This act extends only to notes bearing date in the city and county of *Philadelphia*, and is for the protection of indorsees. But in every action brought by the holder of such note, whether against the drawer or indorsers, the defendant may set-off and default so far as the plaintiff shall be justly indebted to him in account, by bond, specialty, or otherwise.

A balance of accounts due from a factor to his principal, may be set-off in an action on a bond by the latter against the former; and such accounts are not within the act of limitations. *Stiles v. Donaldson*. 2 Dallas, 264.

Promissory notes are taken by the indorsee, subject to all the equitable circumstances to which they were subject in the hands of the indorser. 1 Dal. 441.

Where the Commonwealth sues on a settlement of accounts, the party shall have the benefit of a set-off, but not so as to bring the Commonwealth in debt; for the defendant shall not indirectly recover from the State, a substantive, independent claim, by way of set-off, any more than he could directly recover a debt due from the State, by bringing a suit against her. *Commonwealth v. Matlack*. 4 Dallas, 303.

Debt on bond. On the plea of payment, defendants offered to give *no consideration* in evidence. Objected, that the consideration of a bond is not inquirable into, the passing the bond being a gift in law of the money. To this it was answered, and so ruled by the court, that there being no Court of Chancery here, there is a necessity, in order to prevent a failure of justice, to let the defendants in, under the plea of payment, to prove mistake, or want of consideration. *Swift v. Hawkins* and others. 1 Dallas, 17. And the jury may, and ought to presume every thing to have been paid, which in equity and good conscience, ought not to be paid. *Ibid*. 260.

Plaintiff shall not be liable for costs, if his demand is reduced to the sum within a Justice's cognizance, by a set-off, which it was in the option of defendant to plead or not. 1 Dallas, 308-9. 2 Dallas, 74.

By the 7th section of the act to amend and consolidate with its supplements, the act entitled "An act for the recovery of debts and demands, not exceeding one hundred dollars before a Justice of the Peace," &c. passed March 20th, 1810, a defendant, who shall neglect or refuse in any case to set off his demand, whether founded upon bond, note penal, or single bill, writing obligatory, book account, or damages, which shall not exceed one hundred dollars, before a Justice of the Peace, shall be; and is for ever barred from recovering against the party plaintiff, by any after suit—but if on judgment by default, and he is entitled to a set-off, he may have a rehearing, on application within a limited time, on certain conditions therein prescribed. And by the 20th section of the same act, the powers of Justices of the Peace shall extend to all cases of rent not exceeding one hundred dollars, so far as to compel the landlord to defalcate or set-off, the just account of the tenant out of the same; but the landlord may waive further proceedings, and pursue the method of distress for the balance so settled, &c. See the act relating to domestic attachments, passed Dec'r 4th, 1807, sect. 10, (chap. 2873,) as to set-off between the debtors and trustees, in cases of domestic attachment.



1705.

## CHAPTER CLI.

*An ACT for bailing of prisoners, and about imprisonment. (f)*

All persons  
bailable, ex-  
cept for felo-  
nies of death.

The liberty  
of prisoners ;

and their al-  
lowance.

*BE it enacted*, That all prisoners shall be bailable, by one or more sufficient sureties, to be taken by one or more of the Judges or Justices that have cognizance of the fact, unless for such offences as are or shall be made felonies of death by the laws of this province. And, at least every half year, there shall be a gaol delivery in every county of this province, where imprisonment is not the punishment. And that gaolers shall not oppress their prisoners ; and that all prisoners shall be free as to room ; and all prisoners shall have liberty to provide themselves with bedding, food and other necessaries, during their imprisonment. And that the public allowance shall be two pence per day, and no more. And that the respective prisons shall be workhouses, until others are provided, for felons, thieves, vagrants, and loose and idle persons, whereof one shall be in each respective county of this province. And that no person or persons shall be obliged to answer to any indictment or presentment, unless the prosecutor's name be inserted thereon. And if any person or persons shall be imprisoned or prosecuted without probable cause, he, she, or they shall have double damages against the informer or prosecutor, to be recovered by an action at common law.

Passed in 1705.—Recorded A. vol. I. page 199. (g)

(f) By a supplement (post. chap. 610,) an allowance of three pence *per diem* is made to each person committed for a criminal offence. By chap. 153, *post.* persons of known estates refusing to pay their debts are to be kept at their own charges. By chap. 229, *post.* provision was made for erecting houses of correction and work-houses in the respective counties.

In the old constitution, it was provided, that "All prisoners shall be bailable by sufficient sureties, unless for capital offences, where the proof is evident, or presumption great." Chap. 2, sect. 28, and the existing constitution declares, "that excessive bail shall not be required." Art. 9, sect. 13. The *Habeas Corpus* act, passed on the 18th of February, 1735, (chap. 1121,) provides satisfactorily for the better securing personal liberty, and preventing wrongful imprisonment. For the cases in which bail shall be allowed only by the Justices of the Supreme Court, see chap. 1505 ; and for the various alterations in the penal code of Pennsylvania, as well respecting the accommodation of prisoners, as the punishment of crimes, see the proper titles in the *index* to this edition.

By an act of the 4th of April, 1792, (chap. 1625,) provision is specially made for the relief and support of poor confined debtors.

The act in the text cannot be supposed to intend, that a prosecutor's name should be endorsed on an indictment, unless where a prosecutor really exists ; and proof of the person prosecuting must be made by indifferent witnesses. 1 Dallas, page 5. (*Note to former edition.*)

(g) Chap. 153, referred to in the foregoing note to the former edition, is repealed by an act passed March 20th, 1810. And the supplement (chap. 610,) extends the act in the text to persons committed for any criminal offence whatever ; whether before or after conviction : and the allowance is to be paid out of the county stock.

By the existing constitution, the powers and authorities of the Courts of *Oyer* and terminer and gaol delivery in all cases, is vested in the president and judges of the Courts of Common Pleas, who by their precept, may direct the times of holding such Courts ; which is now usually done at the stated terms four times in the year, if occasion shall require it, for the trial of capital or other offences : and by the 4th section of the supplement to sundry penal laws of this commonwealth, passed March 21st, 1806, (post. chap. 2687,) The Presidents of the Courts of Common Pleas may admit to bail any person accused of robbery, burglary, sodomy or buggery, as fully as the judges

of the Supreme Court might do under the act of April 5th, 1790. (post. chap. 1505.)

See the act of April 7th, 1807, (chap. 2824,) with respect to the daily allowance to poor insolvent debtors.

*Respublica v. Negro Jacob. Franklin, April 1799.*

The prisoner was convicted of larceny, on an indictment removed from the sessions, upon slight evidence, and against the charge of the Court. Under the special circumstances, his counsel moved that he should be bailed till the day in bank, when they would move for a new trial.

The counsel for the prosecution gave no consent, but submitted to the Court's decision.

The Court said it lay in their discretion to admit him to bail, though after conviction.—One convicted of manslaughter has been bailed before clergy had. 1 Salk. 61, 103. 12 Mod. 109. 2 Hawk. c. 15. § 40. And the peculiar circumstances of the present case call for the Courts interposition. The prisoner accordingly entered into a recognizance; and in December 1799, a new trial was granted in bank, upon a statement made of the evidence, and the Attorney-General immediately entered a *nolle prosequi*. MSS. Reports.

See the statute 1 and 2 Philip and Mary, Sect. 2, 3, 4, 5, which extend to *Pennsylvania*. The 4th section which is in daily practice, is in these words: "And that the said justices, when any such prisoner is brought before them for any manslaughter or felony, before any bailment or mainprize, shall take the examination of the said prisoner, and information of them that bring him, of the fact and circumstances thereof, and the same, or as much thereof as shall be material to prove the felony, shall put in writing before they make the same bailment; which said examination, together with the said bailment, the said justices shall certify at the next general gaol delivery to be holden within the limits of their commission."

The 5th section relates to the duty of coroners.

So—Stat. 2d and 3d Philip v. Ma-

ry, chap. 10, sect. 2; "And for as much as the said act, (1 and 2 P. and M.) doth not extend to such prisoners as shall be brought before any justice of the peace for manslaughter or felony, and by such justice shall be committed to ward for the suspicion of such manslaughter or felony, and not bailed, in which case the examination of such prisoner and of such as shall bring him, is as necessary, or rather more than where such prisoner shall be let to bail or mainprize: *Be it therefore enacted, &c.* that from henceforth such justice or justices, before whom any person shall be brought for manslaughter or felony, or for suspicion thereof, before he or they shall commit or send such prisoner to ward, shall take the examination of such prisoner, and information of those that bring him of the fact and circumstance thereof, and the same, or as much thereof as shall be material to prove the felony, shall put in writing within two days after the said examination; and the same shall certify in such manner and form, and at such time, as they should and ought to do, if such prisoner so committed, or sent to ward, had been bailed or let to mainprize, upon such pain as in the said former act is limited and appointed for not taking, or not certifying such examinations as in the said former act is expressed. *And be it further enacted*, that the said justices shall have authority by this act, to bind all such by recognizance or obligation, as do declare any thing material to prove the said manslaughter or felony against such prisoner as shall be so committed to ward, to appear at the next general gaol delivery to be holden within the county, city, or town corporate where the trial of the said manslaughter or felony shall be, then and there to give evidence against the party; and the said justices shall certify the said bonds taken before them, in like manner as they should and ought to certify the bonds mentioned in the said former, upon pain as in the said former act is mentioned, for not certifying such bonds as by the said former act is limited and appointed to be certified."

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## CHAPTER CLII.

*An ACT for taking lands in execution for payment of debts.*

TO the end that no creditors may be defrauded of their just debts, due to them from persons who have sufficient real, if not personal, estates to satisfy the same, *Be it enacted*, That all such lands, tenements and hereditaments whatsoever, within this province, where no sufficient personal estate can be found, shall be liable to be seized and sold, upon judgment and execution obtained.

Lands, &c. may be sold for the payment of debts;



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unless the  
rents will  
satisfy the  
debt in seven  
years.

II. *Provided always*, That when any debt is hereafter recovered, and damages awarded, or when any debt is acknowledged before such as have, or shall have, power to take cognizance thereof, and executions awarded thereupon, to be levied upon the lands, tenements or hereditaments, of any person or persons whatsoever, it shall not be lawful for any Sheriff or other officer, by virtue of such executions, or of any writ or writs thereupon, to sell, or expose to sale, any such lands, tenements or hereditaments, in this province, which shall or may yield yearly rents or profits, beyond all reprises, sufficient within the space of seven years, to pay or satisfy such debts or damages, with costs of suit; but that all those lands, tenements and hereditaments, shall, by virtue of the writ or writs of execution, be delivered to the party obtaining the same, until the debt or damages be levied by a reasonable extent, in the same manner and method as lands are delivered upon writs of *elegits* in England.

If not, &c.  
the lands  
may be sold.

III. *Provided nevertheless*, That if the clear profits of such lands or tenements shall not be found, by inquest of twelve men, to be sufficient within seven years, to satisfy the debt or damages in such executions; or if, before the extent be out, any other debts or damages shall be recovered against the same debtor or defendant, his heirs, executors or administrators, which, with what remains due upon such extent, cannot all be satisfied out of the yearly profits of the lands or tenements so extended within seven years, then, and in every such case; the Sheriff or other officer shall accordingly certify the same upon the return of such executions; whereupon writ or writs of *venditioni exponas* shall issue forth, to sell such lands and tenements, for and towards satisfaction of what shall so remain due upon such extent, as also towards satisfaction of all the rest of the said debts or damages, in manner as is herein after directed concerning the sale of other lands.

Proceedings  
thereon.

IV. *And be it further enacted*, That it shall and may be lawful for the Sheriff, or other officer, by a writ of *levari facias*, to seize and take all other lands, tenements and hereditaments in execution, and thereupon, with all convenient speed, either with or without any writ of *venditioni exponas*, to make public sale thereof, for the most they will yield, and pay the price or value of the same to the party, towards satisfaction of his debt, damages and costs. But before any such sale be made, the Sheriff, or other officer, shall cause so many writings to be made, upon parchment or good paper, as the debtor or defendant shall reasonably desire or request, or so many, without such request, as may be sufficient to signify and give notice of such sales or vendues, and of the day and hour when, and the place where, the same will be, and what lands or tenements are to be sold, and where they lie; which notice shall be given to the defendant, and the said parchments or papers fixed by the Sheriff, or other officer, in the most public places of the county or city, at least ten days before the sale; and upon such sale, the Sheriff or other officer shall make return thereof, indorsed or annexed to the said *levari facias*, and give the buyer a deed, duly executed and acknowledged in court, for what is sold, as has been heretofore used upon the Sheriff's sale of lands. But in case the said lands and heredita-

Notice to be  
given ten  
days.

After the sale  
the Sheriff to  
give the buy-  
er a deed, &c.



ments so to be exposed, cannot be sold, then the officer shall make return upon the writ, that he exposed such lands or tenements to sale, and the same remained in his hands unsold, for want of buyers ; which return shall not make the officer liable to answer the debt or damages contained in such writ, but a writ, called *liberari facias*, shall forthwith be awarded, and directed to the officer, commanding him to deliver to the party such part or parts of those lands, tenements and hereditaments, as shall satisfy his debt, damages and interest, from the time of the judgment given, with cost of suit, according to the valuation of twelve men ; to hold to him as his free tenement, in satisfaction of his debt, damages and costs, or so much thereof as those lands, by the valuation thereof as aforesaid, shall amount unto. And if it fall short, the party may afterwards have execution for the residue against the defendant's body, lands or goods, as the laws of this province shall direct and appoint, from time to time, concerning other executions. All which said lands, tenements, hereditaments and premises, so as aforesaid to be sold or delivered by the Sheriff or officer aforesaid, with all their appurtenances, shall or may be quietly and peaceably held and enjoyed by the person or persons, or bodies politic to whom the same shall be sold or delivered, and by his and their heirs, successors or assigns, as fully and amply, and for such estate and estates, and under such rents and services, as he or they, for whose debt or duty the same shall be so sold or delivered, might, could or ought to do, at or before the taking thereof in execution.

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How the creditor shall be satisfied, and hold the said lands, &c.

V. *Provided always*, That the messuage, lands or tenements, upon which the defendant is chiefly seated, shall not be exposed to sale before the expiration of one whole year after judgment is given, to the intent that the defendant, or any other for him, may redeem the same.

See the note to chap. 48, ante, pa. 8.

VI. And forasmuch as divers persons have mortgaged their lands and tenements in this province, for securing the payment of monies, and some of them have died before the time of payment, and left others to succeed them, that have proved insolvent, and others have neglected to pay the mortgage-money, and so mortgages have become no effectual security, considering how low the annual profits of tenements and improved lands are here, and the discouragements which the mortgagees meet with, by reason of the equity of redemption remaining in the mortgagers : *Be it therefore enacted*, That where default or defaults have been or shall be made or suffered, by any mortgager or mortgagers of any lands, tenements, or other hereditaments within this province, or by his, her or their heirs, executors, administrators and assigns, of or in payment of the mortgage-money, or performance of the condition or conditions, which they or any of them, should have paid or performed, or ought to pay or perform in such manner and form, and according to the purport, tenor and effect, of the respective provisoes, conditions or covenants, comprised in their deeds of mortgage or defeazance, and at the days, times and places, in the same deeds respectively mentioned and contained ; that in every such case, it shall and may be lawful to and for the mortgagee or mortgagees, and him, her or them, that grant the said deeds of defeazance, and his, her and their

The mortgagee, upon non-payment of the mortgage-money, may, after one year, sue forth a writ of *scire facias*, &c.



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heirs, executors, administrators or assigns, at any time after the expiration of twelve months, next ensuing the last day whereon the said mortgage-money ought to be paid, or other conditions performed as aforesaid, to sue forth a writ or writs of *scire facias*, which the Clerk of the Court of Common Pleas for the county or city where the said mortgaged lands or hereditaments lie, [and he\*] is hereby impowered and required to make out and dispatch, directed to the proper officer, requiring him, by honest and lawful men of the neighbourhood, to make known to the mortgager or mortgagers, his, her, or their heirs, executors or administrators, that he or they be and appear before the Magistrates, Judges or Justices of the said court or courts, to shew, if any thing he or they have to say, wherefore the said mortgaged premises ought not to be seized and taken in execution for payment of the said mortgage-money, with interest, or to satisfy the damages which the plaintiff in such *scire facias* shall, upon the record, suggest, for the breach or non-performance of the said conditions. And if the defendant in such *scire facias* appears, he or she may plead satisfaction or payment of part or all the mortgage-money, or any other lawful plea, in avoidance of the deed or debt, as the case may require : But if the defendants in such *scire facias* will not appear on the day whereon the same writ shall be made returnable, then, if the case be such as damages only are to be recovered, an inquest shall be forthwith charged to enquire thereof, and the definitive judgment therein, as well as all other judgments to be given upon such *scire facias*, shall be entered, that the plaintiff in the *scire facias* shall have execution by *levari facias*, directed to the proper officer ; by virtue whereof the said mortgaged premises shall be taken in execution, and exposed to sale in manner aforesaid ; and upon sale, conveyed to the buyer or buyers thereof, and the money or price of the same rendered to the mortgagee or creditor ; but for want of buyers, [and] to be delivered to the mortgagee or creditor, in manner and form as is herein above directed concerning other lands and hereditaments, to be sold or delivered upon executions for other debts or damages ; and when the said lands and hereditaments shall be so sold or delivered as aforesaid, the person or persons to whom they shall be so sold or delivered, shall and may hold and enjoy the same, with their appurtenances, for such estate or estates as they were sold or delivered, clearly discharged and freed from all equity and benefit of redemption, and all other incumbrances made or suffered by the mortgagers, their heirs or assigns ; and such sales shall be available in law, and the respective vendees, mortgagees or creditors, their heirs and assigns, shall hold and enjoy the same, freed and discharged as aforesaid ; but before such sales be made, notice shall be given, in writing, in manner and form as is herein above directed concerning the sales of lands upon executions, any law or usage to the contrary notwithstanding.

And expose  
to sale the  
mortgaged  
premises.

Such sales  
shall be avail-  
able in law,  
&c.

Overplus to  
be returned  
to the debtor.

VII. *Provided also*, That when any of the said lands, tenements, or hereditaments, which by the direction and authority of this act

\* The words [and he] [and] inserted between crotchets in this section, are contained in the original roll and record, but not in the last edition. Though the insertion destroys the context, it has not been deemed proper to omit it. (Note to former edition.)



are to be sold for payment of debts and damages, in manner aforesaid, shall be sold for more than will satisfy the same debts or damages, and reasonable costs, then the Sheriff or other officer, who shall make the sale, must render the overplus to the debtor or defendant; and then, and not before, the said officer shall be discharged thereof upon record, in the same Court where he shall make return of his proceedings concerning the said sales.

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VIII. *Provided also*, That no sale or delivery, which shall be made by virtue of this act, shall be extended to create any further term or estate to the vendees, mortgagees or creditors, than the lands or hereditaments so sold or delivered shall appear to be mortgaged for, by the said respective mortgages or defeazible deeds.

The estate of the mortgager shall pass to the buyer.

IX. *Provided also*, That if any of the said judgments, which do or shall warrant the awarding of the said writs of executions, whereupon any lands, tenements or hereditaments, have been or shall be sold, shall, at any time hereafter, be reversed for any error or errors, then, and in every such case, none of the said lands, tenements or hereditaments, so as aforesaid taken or sold, or to be taken or sold upon executions, nor any part thereof, shall be restored, nor the Sheriffs' sale or delivery thereof, avoided, but restitution, in such cases, only of the money or price for which such lands were or shall be sold.

The lands, &c. not to be restored upon the reversal of the judgments, &c.

Passed in 1705.—Recorded A. vol. I. page 199. (h)

(h) For a general view of the law on the subject of this act, see the notes to chap. 48, ante, page 8. The additional notes are here arranged according to the subject matter of the different sections.

§ 1. Although the sheriff is bound to sell the defendant's personal estate, before he can sell his lands, yet it has been held in the Supreme Court, that he may proceed otherwise with the party's consent. All possible, contingent titles in lands, accompanied with a real interest, may be seized and taken in execution. MSS. Reports—as a vested remainder in tail. 2 Dallas, 223.

The *feri facias*, by virtue of which the lands of defendant had been sold, only directed the sheriff to levy of the goods and chattels, &c. and it was objected, that this was not an authority to take the lands in execution.

By the Court. Lands are to be considered as chattels in Pennsylvania for the payment of debts. In some counties of this state, the writs of *feri facias*, always issue in that form. It is said that the precedents mention "Lands and Tenements:" but this has not been proved, as it ought to be, by producing in Court such precedents before, at the time, and subsequent to the issuing of the writ. At most, however, it is but an omission in point of form, which is too slender a foundation for oversetting a sheriff's sale of lands. *Andrews lessee v. Fleming*, 2 Dallas, 93.

§ 2, 3. There had been a levy upon lands by virtue of a *feri facias*, and the inquisition which had been held upon it, previous to the return, was quashed for irregularity. It then became a question whether a new *Fieri Facias* must be issued; or whether the sheriff might proceed, after the return of the former writ, to take a new inquisition without further process?

*Shippen*, President. I cannot perceive any thing in the act of assembly which precludes the sheriff from holding an inquest after the return of the *feri facias*, and I have always understood it to be the practice to do so. The present inquisition being quashed for irregularity, becomes a nullity, and leaves the case just as if none had been taken. *Weaver v. Lawrence*, 1 Dallas, 379. But if the levy is set aside, and a *venditioni exponas* is issued without a fresh levy, a sale under it is void, and the purchaser derives no title, 2 Binney, 92.

The sheriff had levied on a house and lot by virtue of a *feri facias*, and an inquest was held which declared the rents of the estate sufficient to pay the debt in seven years; but in the return to the *feri facias*, it was stated that the defendant had only a life estate in the premises. A motion was thereupon made to quash the inquisition.

*Shippen*, President. The question is, whether an estate for life can be taken in execution, and delivered to the plain-



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tiff, upon return of an inquest, that the rents and profits are sufficient for paying the debt in seven years? On a fair construction of the act of assembly, we do not think the legislature intended, that an estate for life should be delivered to the plaintiff in satisfaction of his debt. The general interest, and of consequence, the septennial value, are so precarious, that they could not have been in contemplation, in making a positive provision, that the estate should be delivered *until the plaintiff's debt is paid*. Besides, if the legislature had so intended, a provision would surely have been added, to supply any deficiency in case of a failure of the estate, before the discharge of the debt; as, in another case, the same act especially provides, that, if the valuation of the land delivered to the plaintiff towards satisfaction of his debt, shall fall short, he may have another execution against the defendant's body, lands or goods, for the residue.

We are, therefore, of opinion, that the estate for life taken in execution, may be sold, without holding an inquest on its value: and consequently, that the inquest, in the present case, must be quashed. *Howel & al v. Woolfort*, 2 Dallas, 75.

So, likewise, it has been held in the Supreme Court, that is not necessary to hold inquisitions on estates for life, or reversions and remainders, previous to a sheriff's sale, or on the estate of the husband in the wife's lands. MSS. Reports.—Resolved on error, *Burd. v. Dansdale*, 2 Binney, 91.

So, where the plaintiff claimed under a sheriff's sale, made in 1771, the land levied on being then *woodland*, and *wholly unimproved*; and it did not appear, that an inquisition had been taken, condemning the lands previous to the sale. Upon an exception taken to the proceedings for want of an inquisition, it was held by the Court, that this part of the act cannot possibly relate to unimproved lands. What yearly rents or profits can mere wood land yield? In *Duncan's Lessee v. Lawrence*, it was ruled on argument, in *Cumberland county*, by the judges, at *May assizes*, 1769, that the want of an inquisition on a vacant lot in *Carlisle*, did not vitiate the sale by the sheriff. And the same resolution also took place in this county, in *Johnson's Lessee v. Lochry*.—*Duncan's Lessee v. Robeson*, at *Nisi Prius*, *Westmoreland county*, *May* 1799. Before *Yeates* and *Smith*, Justices. MSS. Reports.

It is not necessary to notify the defendant of the time and place of taking an inquisition on the lands levied on: nor is the sheriff bound to levy on all

the defendant's lands in his bailiwick, though he cannot cut up and divide a particular tract. MSS. Reports, Supreme Court, (*infra*,) and see, now, the 11th section of the act of 21st March, 1806, (post. chap. 2686.)

It has been adjudged, December 1809, that an inquisition cannot be supported unless there has been notice in fact to the defendant either of the levy, or, of the time and place of holding the inquest.

*Tilghman, C. J.* It is not necessary to say how the case would be, if there had been notice either of the levy or inquest; but where there has been neither, the inquest cannot be supported. Here the defendant had no notice of the levy, nor any, except the general notice of the inquest put up in the prothonotary's office. The inquisition must be set aside.

*Yeates, J.* of the same opinion.

*Brackenridge, J.* The notice required by the act, (chap. 2686,) has nothing to do with the levy, but relates solely to the inquisition. The return of the levy is notice; but there does not appear either time or place for holding the inquisition, without notice to the defendant. The object of the act was to prevent surreptitious inquests to procure the condemnation of property without giving the defendant an opportunity to shew that the rents and profits would pay in seven years. They might be held in an obscure place, or at an unreasonable time; but when notice is given, the defendant may say, hold the inquest on the land. *Heydrick v. Eaton*, 2 Binney, 215.

A Mortgage, payable by instalments, all of which become due within seven years next after an inquisition taken, must be taken into consideration by the jurors. MSS. Reports, Supreme Court.

The English Statute of 13th *Edward*, 1, chap. 18, which gives the writ of *Elegit*, does not extend to *Pennsylvania*; yet where the rents, issues and profits of lands will pay the debt within seven years, they are to be delivered to the plaintiff until the debt or damages be levied by a reasonable extent, in the same manner or method as lands are delivered upon writs of *elegit* in *England*. The law thus recognizing and adopting the English practice in this respect, it may be useful to give a brief view of that practice. But as there are no cases to be met with in *Pennsylvania* ascertaining the extent to which the English practice has been in use, it will be evident to the reader that this part of the note is not sanctioned by the authority of our Courts. In *England*, upon the writ of *elegit* the sheriff delivers to the plain-



tiff only one half of the defendants lands and tenements, to be occupied and enjoyed until his debt and damages are fully paid. In this respect, our law is more beneficial to creditors. The estate by *elegit*, is, therefore, a mere conditional estate, defeasible as soon as the debt is levied. Upon this writ the sheriff is to impanel a jury, who are to make inquiry of all the goods and chattels of the debtor, and to appraise the same, and also to inquire as to his lands and tenements; and upon such inquisition, the sheriff is to deliver all the goods and chattels (except the beasts of the plough) and a moiety of the lands to the party, and must return his writ, in order to record such inquisition in that court, out of which the *elegit* issued. And when the jury have found the seizin and value of the land, the sheriff, and not the jury, is to set out and deliver a moiety thereof to the plaintiff by metes and bounds.

It is clear, therefore, that in extending lands in *Pennsylvania*, "In the same manner and method as lands are delivered upon writs of *elegit* in *England*," as the act in the text directs, the sheriff must summon an inquest, to ascertain the value of the land, and the clear yearly rents and profits beyond all reprises, and the number of years, within seven, which will be necessary to satisfy the debt and damages and costs; and the sheriff must deliver possession accordingly, and return his writ, with the inquisition annexed.

And it would seem by the English practice, in order to do complete justice, the creditor is entitled to carry on the interest of his debt, until it shall be gradually diminished, and finally discharged by the receipt of the rents and profits. And in *Pennsylvania*, it is the uniform practice to calculate the interest on all judgments for the seven years, to enable the jury, on the first inquisition, to decide whether or not the estate will satisfy them, by the yearly rents and profits, beyond all reprises, within the term of seven years.

A difference is also to be observed, in the practice under our law, and that by the writ of *elegit* in *England*. The sheriff does not deliver the goods and chattels to the creditor here, upon a valuation, as is commanded by the *elegit*, for that writ cannot issue in *Pennsylvania*. And before lands can be seized and extended or sold, the personal property must be exhausted by the levy on the *feri facias*, which is the only process known to our law in such cases. But if no sufficient personal estate can be found, the land may then be taken in execution, and a mode of proceeding

is introduced by the act in the text, which is unknown to the *English* law; that is, the first inquisition, to ascertain whether the real estate levied upon will, or will not satisfy the debt and damages within seven years. If the inquest finds that it will not, then a writ of *conditioni exponas* issues, to make sale of the premises; but if the real estate can be extended, then a *liberari facias* issues, commanding the sheriff to deliver the possession to the creditor; and upon this writ, the second inquisition takes place as before stated.

In pursuing this subject, it is further to be observed, that in *England*, the sheriff does not now, as formerly, deliver *actual*, but only *legal*, possession of a moiety of the lands; and in order to obtain *actual* possession, the plaintiff must proceed by ejectment, in which he must not only prove the judgment, and that an *elegit* issued and was returned, but he must also prove the writ of *elegit*, and inquisition upon it, which carve out the term, and give the right of entry.

In following the "Manner and method of delivering lands upon writs of *elegit* in *England*," this inconvenient practice crept into our law; and it was conceived that the sheriff, on a *liberari facias*, could only deliver the *legal* possession to the plaintiff, but could not turn the defendant out of the *actual* possession, and that the plaintiff must have recourse to the ejectment to obtain the benefit of his process. The legislature, therefore, to remedy this mischief, provided, by an act passed April 13th, 1807, (post. chap. 2872,) "That on the execution of a *liberari facias*, where the defendant or his tenant is in possession of the premises to be extended, the sheriff shall deliver the *actual* possession thereof to the plaintiff or his agent."

By the third section of the act in the text, it is provided, that if before the extent be out, any other debts or damages be recovered against the same debtor or defendant, his heirs, &c. which with what remains due upon such extent, cannot be satisfied within seven years, &c. then a *conditioni exponas* shall issue to sell the lands, &c. and by the 4th section, provision is made for a new execution in certain cases. And to complete the remedy, it is necessary to state, that the English statute of 32 Henry 8, chap. 5, which is in force in *Pennsylvania*, provides for the case of an eviction of the lands extended. It is intitled "For the continuance of debts upon execution," and (omitting the preamble, which recites the mischiefs to be remedied) is in these words: "That if hereafter any



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such lands, tenements, or hereditaments, as he, or shall be had or delivered to any person or persons in execution as aforesaid, upon any just and lawful title, matter, condition or cause, wherewithal the said lands, tenements, and hereditaments were liable, tied and bound at such time as they were delivered and taken in execution, shall happen to be recovered, lawfully divested, taken or evicted out, of and from the possession of any such person and persons, as now have and hold, or hereafter shall have and hold the same in execution, as is aforesaid, without any fraud, deceit, covin, collusion, or other default of the said tenant, or tenants by execution, before such time as the said tenants by execution, their executors or assigns, shall have fully and wholly levied or received the said whole debt and damages for the which the said lands, tenements and other hereditaments were delivered and taken in execution as is aforesaid; then every such recoverer, obligee and recognizee, shall and may have and pursue a writ of *scire facias* out of the same court from whence the said former writ of execution did proceed, against such person or persons as the said writ of execution was first pursued, their heirs, executors or assigns, of such lands tenements or hereditaments as were or been then liable or charged to the said execution, returnable into the said Court at a certain day, being full forty days after the date of the same writ, at which day if the defendant, being lawfully warned, make default, or appear, and do not show and plead a sufficient matter, or cause (other than the acceptance of the said lands, tenements, or hereditaments by the said former writ of execution) to bar, avoid or discharge the said suit for the residue of the said debt and damages remaining unlevied or unreceived by the said former execution, then the Lord Chancellor, or other such Justice or Justices, before whom such writ of *scire facias* shall be returnable, shall make eftsoons a new writ or writs out of the said former record of judgment, statute merchant, statute staple or recognizance, of like nature and effect as the said former writ of execution was, for the levying of the residue of all such debt and damage, as then shall appear to be unlevied, unsatisfied, or unpaid, of the whole sum or sums in the said former writ of execution contained; any law, custom, or other thing to the contrary heretofore used in any wise notwithstanding." And this statute is by a favourable construction, extended to the executors, administrators or assigns of the recove-

ror. See Lord C. Justice Coke's construction of this statute, Co. Lit. 290, a.

But how, if the plaintiff should be fully satisfied for his debt, damages and costs before the term assigned to him shall expire? Shall he continue to hold over, and receive the rents and profits, which in equity belong to the defendant? By the English law, there is a clear remedy. Whether the act in the text, which pointedly refers to the "Manner and method of delivering lands upon the writ of *elegit* in England," adopts all the consequences of the execution by *elegit*, does not appear to be settled in any reported case known to the editor; nor does common experience justify him in expressing any opinion on this point. Yet if the case should arise, a reference to the English law on this head may, at least, be convenient.

If tenant by *elegit*, neglect to take the profits, the defendant, at the time when the debt might have been satisfied thereout, may sue out a *scire facias* to have his land again, (*ad rehabendam terram*,) for the statute which gives the *elegit*, is construed to mean, that the plaintiff shall hold the land not simply until *he be*, but until *he may be satisfied*, without his wilful default. In some cases, the defendant may have a *scire facias* to have his land again before the tenant by *elegit* can have been satisfied for the debt out of the extended value of the land. As where the defendant brings the whole residue of the money into Court, or has a release from the plaintiff, or has paid him the money, and has his acquittance; and may also have a *scire facias* to account, (*ad computandum*,) as well as to have his land again, where the tenant by *elegit* has been satisfied by some casual profit. But the defendant cannot enter, because the possession of the plaintiff, being founded upon matter of record, is not to be taken away by entry before he has an opportunity of answering in a Court of Record.

Yet in the case of an *elegit* upon a judgment at common law, when the tenant by *elegit* has received payment of his debt out of the usual and ordinary profits of the land, the defendant may enter, that is, bring an ejectment without suing out a *scire facias*, because the tenant is only to retain the land until his debt be levied; and as that is a sum certain, it may be ascertained when the plaintiff was, or might have been satisfied out of the extended value of the land.

It will, perhaps, not admit of a reasonable doubt, but that on this latter ground, an ejectment would lie in



*Pennsylvania*, after the expiration of the term assigned under the writ of *liberari facias*. This is, however, but a single case, and leaves the question entirely open as to the mode of proceeding where the plaintiff has been otherwise satisfied, either by payment, or bringing the money into Court, or by some casual and unforeseen profit arising out of the land delivered. The learned reader will likewise distinguish between such parts of this branch of the English law, which apply more to the cases of extent under the *statutes merchant* and *staple*, which are unknown to our law; and the mere case of the extent by the writ of *elegit*. On the general subject, the able note of *serjeant Williams* to the case of *Underhill v. Devereux*, 2 Saunders' Reports, 71, 72, may be profitably consulted.

After an inquest has returned that the rents and profits will pay the debt in seven years, the plaintiff cannot discontinue his *feri facias*, and take out a new one without leave of the Court. This has been the practice and understanding of the Courts of *Nisi Prius*, and great inconveniences might ensue from a contrary practice; because the plaintiff might set aside the proceedings, and levy again on the same land repeatedly, until he got a jury to condemn it, which would take away from the defendant, the benefit of the act of Assembly on this subject. *McCullough v. Guetner*. 1 Binney, 214.

Nor will the Court on the trial of the title of lands sold by the Sheriff, examine whether the jury who condemned them acted erroneously: if there has been any injury done herein, or if the jury have refused to receive evidence of the yearly value of the premises, application should have been made to the Court from whence the process issued, to quash the inquisition. *Murphy's Lessee v. McCleary & al. Miffin, May*, 1802, before Yeates and Brackenridge, Justices. MSS. Reports. So, 2 Binney, 227.

§ 4. A motion being made for a rule on the Sheriff to return a *venditioni exponas*, the Chief Justice, upon a doubt expressed by that officer, said, that by the spirit and words of the act of Assembly, the Sheriff must sell, not merely to the *highest*, but to the *best* bidder; that therefore, if the highest bidder was unable to pay, the Sheriff might make an offer to the next highest; and that if the property was not paid for after a sale, the return should be, that, "the premises were knocked down to A. B. for so much, and that the said A. B. has not paid the purchase-money, and that therefore, the premises remain unsold." *Zantzinger v. Pole*. 1 Dallas, 419.

The general rule is, that the Sheriff should sell different houses or tracts of land separately. If he does otherwise, the Court will set aside the sale, unless there can be shewn a clear exception to the rule. MSS. Reports, Sup. Court. It is essential to justice, and to the protection of unfortunate debtors, that this should be the general rule; any other would lead to the most shameful sacrifices of property. *Rowley v. Brown*. 1 Binney, 61.

Part of a tract of land could not be levied on by a Sheriff, legally, since the act of 1705, nor since the act of 21st March, 1806; nor could an administrator agree to such levy. MSS. Reports, Sup. Court.

The act of March 1806, sect. 11, (post. chap. 2686,) declares, that the Sheriff shall levy on the personal estate; but for want of sufficient personal estate, he shall levy the real estate of the defendant, or such part thereof (*but not less than one whole tract or lot of land with the appurtenances*;) as he may deem sufficient to pay the same. And all inquisitions for the condemnation of real estates, shall be held on the premises in execution, if required by the defendant, or his agent, of which notice shall be given. (ante.)

Levying upon any thing less than the whole tract of land, with the appurtenances, is clearly against the act of assembly; and we are far from thinking that it was proper before that act (March 1806,) it evidently tends to defeat the design, of that act. *By the Court. Snyder v. Castor's administrator*, 2 Binney, 216, (note) S. C. *supra*.

A Sheriff cannot advertise lands for sale, nor proceed to sell without a *venditioni exponas*, nor acknowledge his deed till after the return day of the writ.

In *Porter's Lessee v. Neelan*. The only question before the Court was, whether a sale made by the Sheriff, of lands levied, without a writ of *venditioni exponas*, was valid.

*By the Court.* (Yeates and Smith, Justices.) The act of 1705, expressly directs, that on the condemnation of the lands, a *venditioni exponas* shall issue; and under this authority, the Sheriff sells the lands. The act of 23d March, 1764, is a strong exposition of the former law. It renders Sheriffs' deeds and sales made *bona fide heretofore*, before the publication of the act, for valuable consideration valid in law, though there had been no *venditioni exponas* issued. But that act is, in this particular, wholly retrospective, and has no effect on future cases. *Circuit Court, Fayette county, October*, 1804. MSS. Reports. And in *Glancy's Lessee v. Jones*, at York Circuit Court, April 1805. Both points



1705.

Came before the same Judges for determination. The lands in question had been levied on and condemned. A *venditioni exponas* afterwards issued thereupon on the 29th of January, 1785, returnable to April term, 1785. The Sheriff's deed was dated Feb'y 8th, 1785, and acknowledged at an adjourned Court of Common Pleas on the same day. It recited the judgment, *fi. fa. levy, inquisition and venditioni*; and that the premises were sold, after due advertisements made for that purpose, on the 29th of January, 1785.

The Court charged the jury, that it has been the policy of this government, since the first settlement of the province, to subject real, as well as personal property to the payment of debts; but the mode of selling lands by Sheriffs is pointed out by our municipal acts, which must be conformed to. The act of 1705 expressly directs, that a *venditioni exponas* shall issue to sell lands, unless in the case of a *scire facias* on a mortgage. Without such writ, the sale by a Sheriff is utterly void, and has been so determined in *Porter and Neelan*. Two acts of Assembly have been passed to remedy defects of this nature. The one on the 23d of March, 1764. The other on the 26th of March, 1785. But the language of both acts is confined to cases which happened before those laws were enacted, and is not prospective. They clearly shew, that a legislative provision was deemed necessary to cure such titles. Under what authority could the Sheriff proceed to advertise lands for sale, unless by a writ of *venditioni* directed to him? His power is derived from his writ.

Another objection occurs equally fatal to the Sheriff's deed. It was acknowledged on the 8th of February, seven weeks before the Sheriff was to return his writ, and thereby make known to the Court what he had done thereon. This is the proper time for persons injured by Sheriff's sales to apply to the Court for redress. This is the period of acknowledgment according to the words of the 4th section of the act of 1705, which "has been heretofore used upon the Sheriff's sales of lands." It cannot be dispensed with. A contrary doctrine would open a door to the greatest mischiefs. Such were the grounds of decision in *Murphy's Lessee & McCleary*, at *Lewistown*.

The points thus strongly given in charge to the jury, were confirmed on a motion for a new trial in this case. The Court said they did not feel disposed to throw any weight against Sheriff's sales, but were bound to preserve the law inviolate. That both the excep-

tions which had been made to the Sheriff's sale appeared to be fatal. They knew of no practice which sanctions a Sheriff's deed under circumstances similar to the present; but if such a practice had prevailed, it is bad in itself, and must lead to the most injurious consequences. No usage can repeal the positive provisions of an act of the Legislature. MSS. Reports.

But the sale of lands by a Sheriff may be adjourned till after the return of the *venditioni exponas*. 2 Binney, 91.

This practice is very frequent, and is much to the advantage of the debtor. The writ being always returnable the first day of the term, the land is duly advertised for sale on a day previous to the return day, or on that day; and is then, not uncommonly, adjourned to some more public day, during the court week, when from the attendance of a large number of citizens, a better price may be reasonably expected from the competition of bidders. But in such cases, it is also usual in many counties, to issue another *venditioni*, tested on the first day of the term, for greater caution.

By the act of March 23d, 1764, (post. chap. 510,) lands taken in execution, by one Sheriff who had died or been removed, before sale, and sale had been made by his successor—or where sale had been made by a Sheriff so removed or deceased, and the deed had been executed by his successor, with or without a writ of *venditioni exponas*—or where such sales had been made, and deeds executed by any Sheriff after removal from office, *bona fide*, and for valuable consideration; all such sales are ratified and confirmed. And by a supplement passed Feb'y 24th, 1770, where one Sheriff has sold, but had died, or been removed from office before any deed executed, though such sale were with or without a writ of *venditioni exponas*, if such sale was *bona fide*, for a valuable consideration had and received, on petition of the plaintiff or purchaser, the Court was authorized to direct the Sheriff, or proper officer for the time being, to complete the title by executing a deed, (chap. 604.) And by the 7th section of the limitation act of March 26th, 1785, (post. chap. 634,) no Sheriff's deed, given *bona fide*, and for a valuable consideration, of any lands, &c. where quiet and peaceable possession hath been had of the same for the space of six years, shall be adjudged or taken to be defective, avoided or prejudiced, for not producing in court, upon trial, or otherwise, any writ of *feri facias*, *levari facias*, or *venditioni exponas*, or any returns thereupon, or for want of proof



that due and legal notice of the sales of the same was given, or for not having been recorded in the office for recording of deeds.

The foregoing provisions are entirely retrospective ; and such is the construction of them, as appears by the cases before cited. But the second and third sections of the act of March, 1764, are general and prospective, and regulate the proceedings in the following cases : Where any Sheriff shall, pursuant to the said act (of 1705,) hereafter take in execution, and sell any lands, &c. and shall die, or be removed before any deed executed for the same by him to the purchaser, the plaintiff or purchaser may apply to the Court wherein judgment was obtained, and set forth the case to the said Court, with the reason why the title was not perfected by the former Sheriff who sold the same ; and thereupon the Court, as they shall see cause, and as justice and equity shall require, may order and direct the Sheriff or other proper officer, for the time being, to perfect such title, and execute a deed to the purchaser, &c. And if any Sheriff, who shall hereafter take lands in execution, and shall die or be removed, before any sale made thereof—in every such case, the like process shall issue to his successor, and the same proceedings be had, that might, could, or ought to have issued, or have been had, if such former Sheriff, or other officer had not died or been removed, &c. And see the act of April 2d, 1803, (post. chap. 2378,) whenever any Sheriff or other proper officer, who by virtue of any *testatum* executions, or any other executions, issued either by the Supreme or Circuit Courts, shall take lands in execution, and sell them, and shall die or be removed before any deed executed, similar application is to be made to the Circuit or Supreme Court, in the county where the lands lie, for a deed to be executed by his successor, in the method prescribed by the former act. But much of this act is now inoperative by the abolition of the Circuit Courts.

Transcripts of judgments obtained before Justices of the Peace, may be entered on the docket of the prothonotary, and from the time of such entry shall bind the real estate of the defendants. But no *feri facias* shall issue thereupon, until a certificate shall be first produced to the prothonotary, from the Justice before whom the original judgment was entered, that an execution had issued to the proper constable, and a return thereon that no goods could be found, sufficient to satisfy the said demand. Act of March 20th, 1810,

(post.) which repeals and supplies a similar provision in the "act for the more easy and speedy recovery of small debts," passed March 1st, 1745-6.

Various laws have been passed with respect to the acknowledgment of Sheriffs' deeds.

By the 11th section of the act of April 13th, 1791, (post. chap. 1564,) where lands are sold by the Sheriffs' of the several counties of this State, by virtue of writs issuing out of the Supreme Court, the deed may be acknowledged before the Judges at *Nisi Prius* held in and for the county where such lands lie ; but this part of the act has now become inoperative, except in the county of *Philadelphia*, by the abolition of the Courts of *Nisi Prius* and Circuit Courts.

And, by the same section, wherever any lands are sold by virtue of writs of *testatum*, the deed may be acknowledged in the Court of Common Pleas of the county where the sale is made. And by the 7th section of the act of 30th September, 1791, (post. chap. 1590,) deeds executed by any Sheriff, by order of Court, for lands sold by his predecessor in office, such deeds may be acknowledged in the county where the lands lie, in the same manner as is permitted to be done by the Sheriff who sells and conveys such lands.

And by the 10th section of the act establishing Circuit Courts, passed March 20th, 1799, lands sold by virtue of *testatum* executions, issued either by the Supreme or Circuit Courts, the deeds thereof may be acknowledged before the Justices of the said Circuit Courts in the county where the lands are situated, or in the Courts whence the executions respectively issued, but not elsewhere ; but as there are now no Circuit Courts existing, part of this section is also inoperative.

It had been considered that on an execution and sale of lands, conformably to the English law, that the sheriff could not give possession to the purchaser ; and an elaborate and learned opinion and judgment on this point, is to be found in *Addison's Reports*, page 199. The legislature, therefore, by the act of April 6th, 1802, (post. chap. 2294,) entitled "An act to enable purchasers at sheriff's, or coroner's sales, to obtain possession," have remedied this inconvenience, and where the defendant or his tenant is in possession of the premises sold, the purchaser may serve a notice on him or them, requiring them to surrender the possession within three months after the date of such notice ; and upon neglect or refusal to comply therewith, the purchaser may



1705. apply to two justices and proceed to recover possession according to the well known form of proceeding in case of tenants holding over, under the act, commonly called the landlord and tenant's act; and a mode of proceeding is also provided where the party in possession disclaims holding under the defendant in the execution.

Where the land sold is under lease, the purchaser is to stand in the place of the lessor, and be entitled to receive the rents, &c.

Acknowledging a sheriff's deed in Court, and registering it in the Prothonotary's office, as is always done, is a sufficient recording of it, though not recorded in the office for recording of deeds. 1 Dallas, 68.

§ 6. See the act for acknowledging and recording of deeds, passed in 1715, (post. chap. 208,)—A mortgage to be void unless recorded within six months. See 1 Dallas, 434, 438, 4 Dallas, 153.

A subsequent simple contract debt cannot be recovered on a *scire facias* upon a prior mortgage, but only the principal, interest and costs, on payment of which the Court will stay the proceedings on the *scire facias*. *Dorow, assignee v. Kelly*, 1 Dallas, 142.

*Febiger's Lessee v. Craighead*.

A case was stated for the opinion of the Court containing these facts. A tract of land in Cumberland county, was mortgaged by J. G. to the trustees of the loan-office (whose rights, powers and duties have been transferred by law to the plaintiff, as state treasurer,) and the land was afterwards levied upon, and sold at sheriff's sale to the defendant, by virtue of a subsequent judgment and execution. The question was, whether the mortgage remains a lien upon the land, against the purchaser at sheriff's sale?

*By the Court.* The case admits of no doubt. Judgment must be entered for the plaintiff. 4 Dallas, 151.

Husband and wife have issue, and mortgage the lands of the wife without acknowledging the same. The lands of the wife are bound only during the life of the husband. MSS. Reports, Supreme Court.

§ 9 Objections to sheriffs' sales must be made before the deeds are acknowledged. 2 Binney, 227.

The sheriff's vendee is not to be affected by any secret agreement between the parties to the suit on which the sale was grounded, or by a deed unduly recorded, if he had neither actual, or constructive notice thereof. MSS. Reports, Supreme Court.

But where the sale is fraudulent and covenous, though the sheriff's deed has

been acknowledged, after a rule to shew cause why the sale should not be set aside, the party, or his creditors, may try the fairness of the sale before the Jury. *Lessee of Dawson v. Morris, Philadelphia*, Feb'y, 1807, at *Nisi Prius*. MSS. Reports.

Where a levy is set aside, and a *venditioni exponas* is issued without a fresh levy, a sale under it is void, and the purchaser derives no title. The 9th section of the act in the text protects a purchaser in the event of the reversal of a judgment under which the sale was made; but not where the sale was made under void process. *Burd v. Dansdale's lessee*, in error. 2 Binney, 92.

If a plaintiff levies a *feri facias* upon the defendant's lands, and then charges him in execution upon a *ca. sa.* either the *feri facias* or the *ca. sa.*; may be set aside at the defendant's election; but if he submits to the *ca. sa.* and obtains a discharge from it by the insolvent law, then the *feri facias*, and all the proceedings under it, are gone; and if the plaintiff sues out a *venditioni exponas* and sells, the Court will not permit the Sheriff to acknowledge the deed to the purchaser.

If defendants lands are aliened by him before execution, the plaintiff is not obliged to take a *scire facias* against the terre-tenants, before he can have execution in the hands of the alienee.

An execution within a year and a day, continues the lien of a judgment, without resorting to a *scire facias* under the act of April 4th, 1798.

Whether a sale of defendant's lands under a younger judgment, affects the lien of an older one, remains undecided. *Young v. Taylor and Barron*. 2 Binney, 218.

The *alias* execution, with the *testatum* clause in *Pennsylvania*, is founded on the 24th section of the act of 22d May, 1722, post. chap. 255.

The following English statutes, relating to this subject, extend to *Pennsylvania*.

13 Edward 1, stat. 1. chap. 39. "The manner to deliver writs to the Sheriff to be executed. The sheriff returneth "a liberty," when none is. Returning of issues. Resistance of execution of process."

Those parts only of this statute are in force, which define "what shall be accounted issues."—Direct the punishment of the Sheriff for false returns;—give authority to the Sheriff to do certain things, in case of the resistance of the execution of process; and direct the punishment of those who resist the execution of process.

And 28th Edw. 1, stat. 3, chap. 16. "What shall be done with them that make false returns of writs?" is in these



words: "That shall be done with them that make false return, whereby right is deferred, as it is ordained in the second statute of *Westminster*, (13 Edw. 1, stat. 1, C. 39,) with like pain." This is merely in confirmation of the statute of 13 Edw. 1. See 2 Inst. 457.

13 Edward, 1 stat. 1 chap. 45, "The process of execution of things recorded within the year, or after." The *scire facias*, after the year and day, in *personal* actions, is given by this statute. For though it had been doubted by judges of great learning, yet the settled opinion seems to have been, that at common law, if after judgment given, or recognizance acknowledged, the plaintiff sued out no execution within the year, he was driven to his original upon the judgment.

12 Edw. 2, stat. 1, chap. 6. "An indenture shall be made between the Sheriff and Bailiff of Liberty, of every return."

That part only of this statute is in force, which obliges Sheriffs and other officers, to sign their name to the return of writs.

3 James 1, chap. 8, "An act to avoid unnecessary delays of execution." A writ of error shall be no *supersedeas*, unless sufficient surety entered, &c. So. 16 and 17 Charles 2, chap. 8, sect. 3.

12 James 1, chap. 24. "An act for the relief of creditors against such persons as die in execution."

It is enacted by this statute, that "The party or parties, at whose suit, or to whom any person shall stand charged in execution for any debt or damages recovered, his or their executors or administrators, may after the death of the said person so charged, and dying in execution, lawfully sue forth and have new execution against the lands and tenements, goods and chattels, or any of them, of the person so deceased, in such manner and form to all intents and purposes, as he or they or any of them might have had by the laws and statutes of this realm, if such person so deceased, had never been taken or charged in execution;" but the act does not extend to lands *bona fide* sold by the party in execution, after judgment.

By the second section of the act of 1705, (ante. chap. 132,) page 37, all and every person or persons to whom any lands, &c. shall hereafter be sold or delivered upon executions, shall hold and enjoy their respective parts in severalty, or as tenants in common, and not as joint-tenants.

The Sheriff is not intitled to poundage on a *ca. sa.* unless he receives and pays the money. 2 Binney, 137.

## CHAPTER CLV.

*An ACT for confirming the sales of lands by attornies or agents, and for ascertaining the proof of instruments or writings made out of this province.*

**WHEREAS** divers persons living out of this province, are and have been owners of lands within the same, and such persons have usually appointed attornies to sell and dispose thereof: to the end, therefore, that those who have so purchased, and their heirs or assigns, for ever hereafter, be secured in their titles and estates, *Be it enacted*, That all sales of lands, tenements and hereditaments, formerly made by any attornies or agents, who have been appointed such by any person or persons who had right so to do, and especially given them power or directions therein to sell or convey lands, are and shall be deemed and adjudged good and effectual in law, to all intents, constructions and purposes, whatsoever, as fully as if the said owners of such lands had, by their own deeds, bargains and sales, actually and really sold and conveyed the same; and all and singular the lands, tenements and hereditaments, sold and conveyed as aforesaid, shall be and remain to such purchasers respectively, their heirs and assigns, for ever, as they were or ought to have been to the owner or owners of such lands and premises, so employing his or their attornies or agents as aforesaid.

Sale of lands formerly made by attornies, shall be effectual in law.

**II.** *And be it further enacted*, That all and every bonds, specialties, letters of attorney, and other powers in writing, which shall be

Bonds and letters of att.



1705. <sup>torney, how to be proved.</sup> produced in any Court, or before any Magistrate, in this province, the execution whereof being proved by two or more of the witnesses thereunto, before any Mayor, or Chief Magistrate, or officer of the cities, towns or places, where such bonds, letters of attorney, or other writings, are or shall be made or executed, and accordingly certified under the common or public seal of the cities, towns or places, where the said bonds, letters of attorney, or other writings, are so proved respectively, shall be taken and adjudged as sufficient in law, as if the witnesses therein named had been present, and such certification shall be sufficient evidence to the court and jury for the proof thereof.

Future sales of lands, &c. by power of attorney regulated.

III. *And it is further enacted*, That all sales or conveyances of lands, tenements or hereditaments, which shall hereafter be made by virtue of any letters or powers of attorney or agency, duly executed, which do or shall expressly give power to sell lands or other estates, and be certified to have been proved as aforesaid, or shall be proved in this province before any Justice of the Peace, by one or more of the witnesses thereto, shall be good and effectual in law, to all intents, constructions and purposes whatsoever, as if the said constituent or constituents had by their own deeds, bargains and sales, actually and really sold and conveyed the same.

Powers to be valid until notice of revocation.

IV. *Provided always*, That no sale of lands, tenements and hereditaments, made by virtue of such power or powers of attorney or agency as aforesaid, shall be good and effectual, unless such sale be made and executed while such power is in force; and all such powers shall be accounted, deemed and taken, to be in force, until the attorney or agent shall have due notice of a countermand, revocation, or death of the constituent.

Passed in 1705.—Recorded A. vol. I. page 206.

## CHAPTER CLVIII.

*An ACT to prevent the running of swine at large.*

No swine to run at large without rings and yokes within fourteen miles of Delaware.

Rings and yokes described.

WHEREAS the freeholders and owners of lands and plantations, within this province, have received great damage and spoil in their corn-fields, meadows and outlands, by swine running at large, without rings and yokes: For the prevention whereof for the future, *Be it enacted*, That from and after the first day of the twelfth month, called February, next ensuing the publication hereof, no swine shall be suffered to run at large, without rings and yokes, under the penalty of forfeiting half the value thereof, to the use hereafter expressed: Therefore if any person or persons shall find on his, her or their lands, within fourteen miles of the navigable parts of the river Delaware, any swine, hog or hogs, shoat or shoats, or pigs, without rings in their noses, sufficient to prevent their turning up the ground, and triangular or three cornered yokes or bows about their necks, and to extend at least six inches from the angular point or corner, sufficient to keep them from breaking through fence, it shall and may be lawful for him, her or them, all such swine, hogs, shoats or pigs, to kill and take, and drive and carry away, or to cause them to be killed, taken, driven or carried



away; and being so taken and carried away, the said takers shall forthwith acquaint a Justice of the Peace thereof, and being by him legally attested, that the said swine were taken as aforesaid, without yokes, or bows and ring, the said Justice shall immediately appoint and order two indifferent persons of the neighbourhood, to view and make a just and reasonable appraisement of all such swine, hogs, shoats or pigs, and to make return of their value, number and marks, unto the said Justice of the Peace; as soon as conveniently it may be done after such appraisement, one moiety or half the value whereof shall be forfeit to the person or persons, owners or possessors of such lands where found and taken; and he or they, that shall take up such swine as aforesaid, shall pay unto the said Justice of the Peace, for the use of the owner or owners of such swine, the other moiety or half part thereof; and thereupon the property of all such swine shall be and remain in the said owner or possessor of land as aforesaid, to his and their own proper use, for ever.

1705.  
Proceedings  
on offences  
against this  
act.

II. *And be it further enacted*, That such Justice of Peace shall make publication thereof, by a paper affixed on his house, and on some tree near the high-road side, declaring the number, marks and appraisement, of all such swine, and by whom taken up, to the end that the owners may have notice thereof; unto whom the said Justice of the Peace shall pay the other moiety or half the value of such swine taken and appraised, he first deducting out of the same, two shillings for the appraisers, and two shillings for the Justice's clerk, for their trouble therein. But if it so happen, that the moiety or half part, as appraised, will not pay the said four shillings, then such takers up shall pay what shall be wanting thereof.

Justice to ad-  
vertise, &c.

III. *Provided nevertheless*, That if no person appear, within twelve months after appraisement as aforesaid, to claim the moiety or half part of such swine, that then the said Justice shall pay what money he hath received, the charges as aforesaid first deducted, unto the overseer or overseers of the poor of the township where taken up, for the use of the poor of the said township, and the owners of such swine shall be thereupon debarred from any claim or right to the same, any law, usage or custom, to the contrary in any wise notwithstanding.

IV. *And be it further enacted*, That it shall not be lawful for any swine, hogs, shoats or pigs, to go at large in the towns of Philadelphia, Chester or Bristol, whether yoked and ringed or not; but if any such shall be found running at large, after the first day of the twelfth month next ensuing, such swine, hogs, shoats or pigs, shall be forfeit, one half to him or them that shall take up the same, and the other half to the use of the poor of the respective towns, to be paid to the overseer or overseers accordingly, to the use aforesaid; the said town of Bristol being all the space contained within half a mile square, from the Mill-creek, up the River Delaware.

Passed in 1705.—Recorded A. vol. I. page 210. (i)

(i) See the notes to chap. 56, ante. page 14. By a supplement to this act, passed May 10th, 1729, (post. chap. 303,) the regulations of this act are extended to every part of the province. But by an act passed March 27th, 1784, par-

ticular regulations on this subject are made for the counties of Bedford, Northumberland, Westmoreland, Washington, and Fayette; and the supplement above mentioned is repealed with respect to those counties, (post. chap. 1078.) But



1705.

so far as relates to the county of *Northumberland*, the act of March 1784, is repealed, whereby the first supplement of May, 1729, is revived so far as respects that county, according to its then limits, by an act passed March 7th, 1800, (post. chap. 2109,) and also as far as relates to the county of *Luzerne*, by the act of April 1st, 1805, (post. chap. 2578.)

The act of March 1784, is also repealed by an act passed March 28th, 1808, (post. chap. 2981,) so far as the same respects the counties of *Washington* and *Allegheny*; and new regulations are made for trespassing cattle

and swine; and the supplement of 1729 is not revived, for those counties. And by an act passed February 6th, 1810, so far as respects the boroughs of *Connelville* and *Union town* in the county of *Fayette*. For regulations on this subject in the several boroughs, see the respective acts of incorporation.

By an act passed March 19th, 1810, it shall not be lawful for any swine, hogs, shoats or pigs to go at large in the township of *Kingston*, in the county of *Luzerne*, whether yoked and ringed, or not, and particular proceedings are directed by this act, which is merely of local concern.

# A C T S

OF THE

## General Assembly of Pennsylvania.

Passed at a Session which commenced October 14th, 1710,  
and ended February 28th, 1711.

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CHARLES GOOKIN, LIEUTENANT GOVERNOR.

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1710.

### CHAPTER CLXXII.

*An ACT that no public house or inn, within this province, be kept without licence.*

**FOR** preventing of disorders, and the mischiefs that may happen by multiplicity of public houses of entertainment, *Be it enacted,* That no person or persons whatsoever within this province, shall hereafter have or keep any public inn, tavern, ale-house, tippling-house or dram-shop, victualling-house or public house of entertainment, in any county of this province, or in the city of Philadelphia, unless such person or persons shall first be recommended by the Justices in the respective County Courts, and the said city, in their Quarter Sessions or Court of Record for the said counties and cities respectively, to the Lieutenant-Governor for the time being, for his licence for so doing, under the penalty of five pounds. And that no person, so licensed as aforesaid, shall knowingly suffer any disorder, as drunkenness, or unlawful games whatsoever, in such his, her or their houses, under the penalty of forty shillings for the first offence; and for the second offence, to be suppressed by the said Justices of the said respective courts: and that no such inn-keeper, taverner, or other person as aforesaid, shall presume to continue such public house of entertainment of his own accord after such suppression, or the expiration of his licence, without new licence as aforesaid, under the penalty of five pounds, one half thereof to the Governor for the time being towards the support of this government, and the other half to the use of the poor of the respective township or city where the offence shall be committed.

No person to keep a public house, &c. without recommendation from the Justices for licences.

Drunkenness and gaming not to be suffered in public houses.

**II.** *Provided always,* That nothing herein contained shall extend to debar or hinder the Magistrates of the city of Philadelphia to



1710.

Inn-keepers  
to keep good  
entertainment,  
&c.

The Govern-  
nor's fee.

claim, have and enjoy, all such fines, penalties and forfeitures, as shall be due or forfeited in the Quarter Sessions or Court of Record, to be held for the said city, which are granted them by charter.

III. *And be it further enacted*, That all such inn-keepers as aforesaid, shall keep good entertainment for man and horse, under the penalty of forfeiting forty shillings, for the use aforesaid.

IV. *And be it further enacted*, That the Governor shall have and receive, for every licence to be granted by him pursuant to this act, to any person, to sell wine and other liquors in the city of Philadelphia, three pounds; and to sell all other liquors in the said city, except wine, the sum of forty shillings. And for every licence to any person, to sell wine and other liquors in the towns of New-Bristol, Frankford, Germantown, Darby, Chester and Chichester, the sum of forty shillings. And for every licence to sell wine and other liquors in any other part of this province, the sum of thirty shillings, and no more. And the Secretary shall have, for drawing such licence, with the seal, six shillings, and no more.

Passed in 1710.—Recorded A vol. II. page 11. (k)

(k) For the act prescribing that beer and ale shall be sold in taverns, by wine measure, see ante. chap. 138, page 43: and for the act adulterating strong liquors, see ante. chap. 147, page 48.

By an act of the 31st of May, 1718, (post. chap. 235,) the justices in their general sessions, four times a year, in the respective counties, shall have power to set the prices of all liquors retailed in public houses, and provender for horses in public stables, from time to time, as they shall see fit; which shall be proclaimed by the crier, at the close of the sessions, and fixed on the Court house door for public view; and a penalty is prescribed on demanding higher prices.

By a supplement to this act, passed August 26th, 1721, (post. chap. 244,) the first section of which is repealed by an act passed March 28th, 1808, (post. chap. 2988,) no person shall sell liquors by small measure, without licence, nor shall any public house-keeper, give credit for liquors, or tavern reckonings, in any sum exceeding twenty shillings, under the penalty of forfeiting the debt, nor harbour, entertain or trust minors, or servants, or furnish or sell to negro servants, without licence from the master, or mistress, any strong liquors, mixed or unmixed, under certain penalties, to be increased upon repetition of the offence. Tavern keepers suing for a debt, for liquors retailed, or other expences, above twenty shillings, or arresting any servant for any debt contracted for liquors or accommodations, such suits shall abate, the act may be pleaded in bar, and the plaintiff be non-

suited, and pay double costs. And the fines are appropriated.

By the act of March 19th, 1783, post. chap. 1005,) the licence to keep a public house shall be double the sum for which such licences have been respectively rated by law in the city of Philadelphia; and the several counties of the state, to be received by the clerk of the Court of Quarter Sessions, who shall account for and pay over the same in the manner heretofore directed by law. And the penalty for retailing less than one quart, is fixed at £10, or imprisonment at hard labour for the space of three months.

By the 14th section of the act of April 13th, 1782, (post chap. 959,) the secretary of council, (now of the commonwealth,) is required and enjoined once in every month to enter in the comptroller general's office; (now see the act making a new arrangement of the treasury department, passed March 17th, 1809,) all tavern licences, noting how many have been paid for, and the sums so paid; and also what number of blank licences have been granted, not paid for, and to whom granted. And the comptroller shall cause fair entries to be made of all such sums of money so received by the secretary, and also of all such licences as have been so granted to the several Prothonotaries, and have not been paid for and debit the respective Prothonotaries therewith. And the said Prothonotaries at least once in three months shall settle their respective accounts, &c.

And by the "Act to provide for the better collection of the revenue arising from tavern licences," passed April



22d, 1794, (post. chap. 1752,) the clerks of the several Courts of Quarter Sessions, having obtained from the Secretary of the Commonwealth, a competent number of licences, shall, within ten days after each term in their respective counties, deliver to the treasurer of said counties, a number of licences, equal to the number of persons to whom recommendations shall have been granted, together with a list of the names of the persons so recommended, taking receipts for said licences; and also transmit a list of the names to the Secretary of the Commonwealth, and a duplicate thereof to the Register General, (now to the Auditor General; see the act of March, 1809.)

The county treasurers shall deliver them to the persons recommended, on application and payment therefor; and report to the Court, quarterly, the names of delinquents; and indictments shall be preferred against them, &c.

The county treasurers to receive five per cent. for collecting and paying said money; and shall settle their accounts in the same manner as for state taxes.

The clerks of sessions to receive forty cents for reading a petition for a licence; and seventy-five cents for issuing the recommendation, and no more, in full for all services.

And by the "Act to enforce the collection and settlement of tavern licences," &c. passed April 11th, 1807, (post. chap. 2858,) the county treasurers shall annually settle and pay over all the monies received by them on account of tavern licences to the state-treasurer on or before the first Monday in February succeeding the time they become due, under the penalty of five hundred dollars; and on neglect of such settlement and payment, the accounting officers shall forthwith proceed against the delinquent treasurer; and on their neglect to proceed as aforesaid for the space of thirty days after the said first Monday in February, they shall be liable to the whole amount charged against such county treasurer.

The Register General, whose duties are now transferred to the Auditor General by the act of March, 1809, in his annual reports to the legislature shall make a correct statement of the amount of the licence monies due from the respective counties, and the names of the county treasurers, together with the amount of such licence money as has been paid into the treasury for the preceding year.

The Secretary of the Commonwealth is to sign all tavern licences, instead of the Governor.

The act of 17th March, 1780, (post. chap. 886,) regulates the fees on tavern licences, but this act is very darkly expressed.

By the act against vice and immorality, passed April 22d, 1794, (post. chap. 1746,) if any tavern-keeper, public house-keeper, keeper of a tippling-house, or other retailer of wine, spirituous or other strong drink, shall incite, promote or encourage any games of address, hazard, cock-fighting, bullet playing, or horse-racing, &c. or shall furnish any wine, &c. to any of the persons assembled or attending upon any game of address, &c. or shall permit or allow of any kind of game of address or hazard, playing, betting or gaming for money, or other thing of value whatsoever, either at cards, dice, billiards, bowls, shuffleboard, or any game, device or manner to be practised, played or carried on, within his or her dwelling house, out house, shed or place in his or her occupancy, every such tavern-keeper, &c. legally convicted thereof, shall forfeit and pay, for every such offence, fourteen dollars, and forfeit his licence, during one year thereafter. For the second offence shall pay twenty-eight dollars, and be forever incapable of being a public house-keeper, &c. within this state.

No billiard table, E. O. table, or other device for the purpose of gaming for money, &c. shall be set up, kept or maintained, in any dwelling house, out house, or place occupied by any tavern-keeper, &c. whether such person have a licence, or keep a tippling house, on pain of forfeiting every such billiard table, &c. and twenty-six dollars, on conviction thereof, &c. And on application for a licence, the judges may enquire thereof, and if it does not *appear plainly* to the judges aforesaid that the applicant hath no such device, &c. the said judges shall not recommend such person for a licence.

The judges of the sessions, at the first sessions in every year, shall limit and declare the number of taverns, and so many only shall be licensed for the year following; having regard to the particular neighbourhoods and situations, most suitable for the accommodation of inhabitants and travellers.

By an act passed April 7th, 1807, (post. chap. 2818,) livery stable, and inn-keepers shall have a lien upon any and every horse delivered to them to be kept in their stables, for the expense of their keeping; and particular proceedings are directed for the recovery of such expences by sale.



# ACTS

OF THE

## General Assembly of Pennsylvania.

Passed at a Session begun and held, October 14th, 1712,  
and ended March 27th, 1713.

1713.

CHARLES GOOKIN, LIEUTENANT GOVERNOR.

### CHAPTER CXCVI.

*An ACT for limitation of actions.*

*BE it enacted*, That all actions of trespass *Quare clausum fregit*, all actions of detinue, trover and replevin, for taking away goods and cattle, all actions upon account and upon the case (other than such accounts as concern the trade of merchandize between merchant and merchant, their factors or servants) all actions of debt, grounded upon any lending, or contract without specialty, all actions of debt, for arrearages of rent, except the proprietaries quit-rents, and all actions of trespass, of assault, menace, battery, wounding and imprisonment, or any of them, which shall be sued or brought at any time after the five-and-twentieth day of April, which shall be in the year of our Lord one thousand seven hundred and thirteen, shall be commenced and sued within the time and limitation hereafter expressed, and not after; that is to say, the said actions upon the case, other than for slander, and the said actions for account, and the said actions for trespass, debt, detinue and replevin, for goods or cattle, and the said actions of trespass *Quare clausum fregit*, within three years after the said five-and-twentieth day of April next, or within six years next after the cause of such actions or suit, and not after. And the said actions of trespass, of assault, menace, battery, wounding, imprisonment, or any of them, within one year next after the said five-and-twentieth day of April next, or within two years next after the cause of such actions or suit, and not after: and the said actions upon the case for words, within one year next after the words spoken, and not after.

II. *And be it further enacted*, That if, in any of the said actions or suits, judgment be given for the plaintiff, and the same be reversed

What actions  
to be sued  
within six  
years after  
the cause  
thereof.

And what  
within one  
and two  
years.

If judgment  
be given for  
for plaintiff,



by error, or a verdict pass for the plaintiff, and upon matter alledged in arrest of judgment, the judgment be given against the plaintiff, that he take nothing by his plaint, writ or bill, then, and in every such case, the party plaintiff, his heirs, executors or administrators, as the case may require, may commence a new action or suit, from time to time, within a year after such judgment reversed or given against the plaintiff as aforesaid, and not after.

1713.

and reversed, he may commence a new action within one year.

III. *And be it further enacted*, That in all actions of trespass *Quare clausum fregit*, hereafter to be brought, wherein the defendant or defendants shall disclaim, in his or their plea, to make any title or claim to the land in which the trespass is by the declaration supposed to be done, and the trespass be by negligence or involuntary, the defendant or defendants shall be admitted to plead a disclaimer, and that the trespass was by negligence or involuntary, and a tender or offer of sufficient amends for such trespass, before the action brought, whereupon, or upon some of them, the plaintiff or plaintiffs shall be enforced to join issue; and if the said issue be found for the defendant or defendants, or if the plaintiff or plaintiffs shall be non-suited, the plaintiff or plaintiffs shall be clearly barred from the said action or actions, and all other suit concerning the same.

Where a disclaimer shall be allowed.

IV. *And be it further enacted*, That in all actions upon the case, for slanderous words, to be sued or prosecuted by any person or persons, in any court within this province, after the said twenty-fifth of April next, if the Jury upon trial of the issue in such action, or the Jury that shall enquire of the damages, do find or assess the damages under forty shillings, then the plaintiff or plaintiffs in such action, shall have and recover only so much costs as the damages so given or assessed do amount unto, without any further increase of the same; any law or usage to the contrary notwithstanding.

In actions of slander, where the damages are found under forty shillings, the costs shall be the same.

V. *Provided nevertheless*, That if any person or persons, who is or shall be entitled to any such action of trespass, detinue, trover, replevin, actions of account, debt, actions for trespass, for assault, menace, battery, wounding or imprisonment, actions upon the case for words, be, or at the time of any cause of such action given or accrued, fallen or come, shall be, within the age of twenty-one years, feme covert, *non compos mentis*, imprisoned, or beyond sea, that then such person or persons shall be at liberty to bring the same actions, so as they take the same within such times as are hereby before limited, after their coming to or being of full age, discovery, of sound memory, at large, or returning into this province, as other persons.

Provision for persons under age, &c. having cause of action.

Passed 27th March, 1713.—Recorded A. vol. II. page 71. (1)

(1) For the limitation of actions respecting real estates, and the recovery of forfeitures, see chap. 1134. Against what exceptions a sheriff's deed, with six years quiet possession, shall be effectual, see chap. 1134, sect. 7. Suits against the sureties of sheriffs, or coroners must be instituted within seven years after the date of the bonds. Chap. 1477. [And now, by the act of 28th

March, 1803, (post. chap. 2355,) within five years.] See, also, as to the equitable effect of seven years possession, ante. chap. 145. No fine, or common recovery, nor any judgment, in any real, personal, or mixed action, shall be avoided or reversed, for any defect or error therein, unless the writ of error or appeal be brought and prosecuted with effect within seven years, (chap.



1713. 1564, sect. 20. Debts not secured by mortgage, &c. shall not be a lien on real estate, longer than seven years after the decease of the debtor, unless a suit is brought within that time, in the manner which the law prescribes, chap. 1938. Creditors not exhibiting their accounts within one year after public notice, shall be barred of any dividend in the remaining assets of the decedent's estate, (chap. 1740, sect. 14.) Relations, &c. not exhibiting their legal claims to an intestate's estate within seven years after his decease, shall be barred. *Ibid.* sect. 13. [Limitation of suits against sureties of executors and administrators, chap. 1938, sect. 2.] For the limitations of prosecuting particular offences, and of exhibiting claims on the public; see the index to this edition, title *Limitation*. By an act of the 21st of June, 1781, (chap. 934, sec. 10,) "It was provided, that no debt or demand, which was not barred by any act of limitation on the first day of January, 1776, should be barred by such act, until two years after the passing of the law, and until such time as is limited by law, according to the nature of each case." By an act of the 12th of March, 1783, (chap. 997,) it was further provided, that "No act of limitation of actions should run or be deemed or taken to have run, at any time between the 1st of January, 1776, and the end of one year from and after the 21st of June, 1783, upon all debts and contracts made or entered into before the 1st of January 1776."

The statute of 32 H. VIII. chap. 2, making sixty years possession a valid title to lands, extends to Pennsylvania. 1 Dallas, pages 15, 67. But for the statute to operate, the possession must be adverse. *Ibid.* [This statute is superseded by the act of 1785, (post. chap. 1134.) The Court will never open a regular judgment, to let in a plea of the statute of limitations. 1 Dallas, page 239.]

The acknowledgment of a debt, after a suit brought, takes it out of the statute of limitations. 1 Dallas, page 65.

It is only necessary to enter the continuances, in order to prevent the bar of the statute of limitations, where the writ and declaration disagree as to the nature of the action. 1 Dallas, page 411.

Actions upon promissory notes are to be brought within the same period limited for bringing actions on the case: (See post. chap. 207, sect. 6.) (*Note to former edition.*)

In an action brought by a plaintiff, resident in *South Carolina*, against a defendant resident in *Pennsylvania*, to recover the amount of a promissory note due for more than six years, the act of limitation was pleaded; and the

point was referred, upon a case stated, to the opinion of the Court. After argument, the judges unanimously decided that the action was barred, and gave judgment, accordingly, for the defendant. *Ward v. Hallam*. 2 Dallas, 217.

Unliquidated accounts between merchants, in the capacity of principal and factor, are not within the act of limitations.

The case was, debt on bond, dated August, 1774. Plea, payment with notice of set-off. On the trial in the Common Pleas, Nov'r 19th, 1794. The bond was exhibited, without any indorsement of a payment, for principal, or interest. The defendant, by way of set-off, offered evidence to shew, "that after the execution of the bond, and before the commencement of the suit, the plaintiff had become indebted to him in a sum exceeding the amount of the bond, upon accounts still remaining unliquidated and unsettled between them, as merchants, concerning the sales of merchandize made by the plaintiff, in parts beyond the sea, as agent and factor for the defendant."

It was objected that there was a lapse of more than 17 years, since the date of the last item of the accounts, and no proof given of any subsequent demand of the money now proposed to be set-off; and that the long acquiescence of defendant, as well as the positive bar of the act, must be sufficient to prevent his recovering, or defalking the amount. The Court, however, admitted the evidence, and the jury found a verdict in favour of the defendant, for a balance. And, upon error, the Court were, unanimously, of opinion, that the accounts on which the set-off had been claimed, were not within the act of limitations, and that the evidence was rightly admitted, and affirmed the judgment. *Stiles, plaintiff in error, v. Donaldson*. 2 Dallas, 264.

The act in the text does not prescribe the period when a suit on a bond shall be barred, any more than the statute of 21 James 1, c. 16. But on the principle on which those acts were passed, the law will presume payment after a certain length of time. MSS. Reports, Supreme Court. *Fleeson's Executors v. King*. Suit brought 25 years after bond was payable. Verdict for defendant. S. C. S. MSS.

And in *Matters' executors v. Bullman, Dauphin, Nisi Prius*, October, 1795, before Yeates & Smith, Justices.

Debt on bond, dated 1st of August, 1764, for payment of £. 20 with interest, in one year.

The defendant relied on the presumption of payment after so great a lapse of time.



The suit was brought to Sept'r, 1792. A small payment was indorsed on the bond, as having been paid 3d June, 1772, which was sworn by two witnesses to be the *hand writing* of the *defendant*; but another witness, who had the bond in his possession for some time, swore that the indorsement was not on the bond in 1776—but must have been made since. A demand was made from defendant in 1792, before the commencement of the suit, who said he was willing to pay what was due on the bond, but that he had paid £. 10 thereon to *J. M.* in 1771, and appointed a subsequent day for settlement, but did not keep his appointment.

To account for the length of time, plaintiffs shewed, that their testator, by his will dated 3d March, 1770, had devised to his widow certain bonds, which had been assigned to her, and after his death she possessed herself of this obligation, against the consent of at least one of the executors, and held it until the death of *J. M.* who was her second husband, in 1776, when she delivered it up, and died in 1778.

The declarations of the other executor, who was the brother-in-law of the defendant, on the morning of the trial, were given in evidence, that the widow of *Matter* had received the bond, with the others from him, and that some part of the bond had been paid, but not to him, nor did he see the money paid.

The Court charged the jury, that as to the *actual* proof of payment, it must be submitted wholly to them. The declarations of the executor, in derogation of his trust, and in favour of his brother-in-law, at that late day, were very suspicious.

On the ground of presumptive payment, arising from length of time, there remained about eighteen and an half years to be accounted for. The bond was payable August 1st, 1765, and from thence to 1st January, 1776, was ten years and five months. Take off the interval from January 1st, 1776, to the 21st June, 1784, under the act of assembly (of March, 1783,) and then recur to 1784, and count to 1792, the time of commencing the suit, the period will be about 8 years and 1 month, making in the whole eighteen and an half years. The law for limitation of actions, does not include bonds and specialties; but the principle which gave rise to that act, extending also to them, it has been determined, that where the limitation act does not apply, *that period* shall not be computed in judging of the legal presumption of payment.

In the case of *Oswald's executors v. Legh*; (1 Term Rep. 271,) the latest

case in the books upon this point, nineteen and an half years, *of itself merely*, were held insufficient to form the presumption; and *Buller, J.* in that case, said, that even with regard to the rule of twenty years, where no demand has been made within that time, that is only a circumstance for the jury to found a presumption upon, and is itself no legal bar.

But in this case, evidence has been given to repel the presumption. 1. The possession of the bond has been in the widow since the testator's death. 2. The defendant has acknowledged a balance due on it. 3. The defendant has indorsed on it a payment in 1772; all of which tend to weaken, if not wholly to destroy the legal presumption.

Verdict for the plaintiff. MSS. Reports.

A legacy, or trust, are not within the act of limitations, but after a length of time payment will be presumed; yet such presumption may be rebutted by other circumstances. MSS. Reports, Supreme Court.

So, where the declaration stated, that the intestate on the 7th of June, 1769, was indebted to the plaintiff in £. 47. 10. 8. for money had and received to his use, of and from the estate of *Tobias Ritter*, as administrator thereof, and so being indebted, promised to pay, &c. (the request to the now administrators was laid on the 1st June, 1789.) Pleas, *non assumpsit*, and *payment*, and *non assumpsit infra sex annos*.

The plaintiff and intestate were joint administrators of the estate of *Ritter*, and settled their administration account, which was passed in the Orphans' Court of Lancaster county; and on the 7th June, 1769, the Orphans' Court settled the sum due to the plaintiff from the intestate, by their decree, to be £. 47. 10. 8. for his advancements beyond what he had received, the chief of the monies having been received by the intestate.

This decree was shewn in evidence as the foundation of the present suit, which was brought to August Term, 1788, in the Common Pleas.

*Smith, Justice*, held, that the act of limitations applied to this case, (being a general *indebitatus assumpsit*,) and that it forms none of the exceptions thereto. The act is founded in common justice and experience; receipts may be lost, and witnesses will die. Indeed slender proof of an acknowledgment of the demand will take a case out of the act; and in one instance it has been determined, that such acknowledgment pending the suit, may be received in evidence. Here nineteen years elapsed



1713. after the decree, before any suit was brought. But the point was reserved; verdict for the defendants.

A new trial was moved for on the 27th of December following, in bank; but the Court refused to grant a rule to shew cause. *Gemberling v. Myers' administrators*, Dauphin, October, 1798, at *Nisi Prius*. MSS. Reports.

The act only takes place from the time when the right of action accrues, and if there be fraud, from the time of its discovery. *Jones v. Rees's executors*. Circuit Court, Fayette county, October, 1804, before *Nates & Smith*, Justices.

This was, case in nature of deceit in the testator for affirming negro *Will* to be a slave for life, and selling him to plaintiff; whereas in truth he was a freeman, and afterwards duly liberated. There were also counts for money had and received, and money laid out and expended, at the instance of the testator.

The facts, so far as they relate to this subject were these. About 1786, *Rees* sold the negro to the plaintiff, and received the consideration money. The negro brought a writ of *homine replegiando* against the plaintiff to December term, 1799. The defendants, after the death of *Rees*, were duly notified thereof, and were required to take upon them the defence. In March, 1801, the suit was tried, and a verdict found for *Will*, the plaintiff, with damages, against *Jones*, the defendant, the now plaintiff.

In the present suit, the pleas were *non assumpsit*, and *non assumpsit infra sex annos*.

The Court said, that the act of limitations did not seem to apply to this case. The bar only takes place from the time when the right accrues, and not from the time of making the promise.

The jury are trying a question of actual or constructive fraud. Wherever there is a fraud, the act of limitations is no plea, unless the fraud be discovered within the time; nor even if the fraud be discovered within six years, unless the party were conscious of it.

While the slavery of the negro was uncontested, the plaintiff had no ground to suppose he had been injured or deceived; but when he obtained his liberty in a due course of law, his right of action accrued against the defendants. MSS. Reports.

And in the case of *Smith v. Porter*, in the Supreme Court, March, 1807, the opinion of the Court, which states the only question in the cause, was delivered by the Chief Justice, as follows:

This case comes before the Court on a special verdict, and the single ques-

tion is, whether a debt due on account, and barred by the act of limitations, is revived by the following clause in the will of *Robert Smith*: "I order and direct all my just debts and funeral expenses to be paid." Clauses of this kind are very usual in last wills. It is a form of old standing, probably introduced from *English* precedents. There are some countries, in which it now is, or heretofore may have been useful to direct the payment of debts in a man's will, because it may tend to make certain kinds of property subject to the payment, which otherwise would not have been so. But in *Pennsylvania*, it is altogether unnecessary; because without such direction the whole property of the testator, real and personal, must be applied to the payment of his debts. To give this direction the largest import it will bear, it is no more than a desire of the testator expressed to his executor, that his just debts shall be paid. Whether the debts are just or not, must be left to the judgment of the executor before he makes a voluntary payment. And if upon a candid examination, he thinks a debt not justly due, it would be doing violence to the words of the testator, so to construe them, as to deprive the executor of the legal means of defence by pleading the act of limitations. But an executor is not allowed to plead that act against a just debt; on the contrary, if he knows it to be just, I think it is as dishonest in him to use that plea, as it would be in the case of his own debt. Considering, therefore, the clause in question, according to its obvious meaning, without regard to judicial decisions, it cannot be said that it revives a debt barred by the act of limitations.

But as this Court is bound by the authority of cases adjudged by their predecessors, it becomes necessary to inquire what decisions have been made.

Some period for the limitation of actions is necessary for the peace of society. I believe, that in all enlightened countries, regulations for the purpose have been adopted. Like all other good things, they are liable to abuse; and the indignation which is excited in honest bosoms at an attempt to evade payment of a just debt, by a legal subterfuge, has sometimes produced decisions which, although not now to be contradicted, are scarcely to be reconciled to reason. The slightest acknowledgments of a debt, though very far from any thing like a promise, have been held to be evidence sufficient to justify a jury in finding that there was an actual promise. But the industry of the plain-



tiffs' counsel has not produced a single case in which it has been decided, that a direction in a will like the present revives a debt barred by the statute. It was several times determined between the years 1690 and 1726, that where a testator creates a fund in trust to pay his debts, the creditors barred by the statute shall come in equally with the others. In the year 1727, however, the House of Lords in *England*, reversed a decree which was founded on this principle in the case of *Blakeway v. the Earl of Strafford*. 3 Bro. Parl. Ca. 305. In the year 1744, *Lord Hardwicke* states the rule to be, that debts barred by the statute shall be paid out of a trust fund of lands created for payment of debts, although he declares he cannot see any good reason for it. 3 Atk. 107. But in 1754, he says that this principle has been a good deal shaken by the decree of the House of Lords in *Lord Strafford's* case, and that if the case before him had turned upon that point, he should have taken time to consider it. Amb. 231. In the case of *Legastich v. Cowne*, in 1730, *Mosely*, 391, it was expressly decided, that the plea of the statute of limitations is a good bar in a case where a testator ordered his debts to be paid. This case is reported by *Mosely*, who does not stand high in reputation; it is

probable, however, that the decision was made as reported, because it was but three years after the decision in the House of Lords in *Lord Strafford's* case; and seems to have been founded on it.

In our own Courts, I know of no decision of the point in question, although I understand, that on more than one occasion, intimations have fallen from different judges unfavourable to the revival of the debt; but as no decision was made, it would not be proper to give weight to these intimations. In point of authority, then, the matter stands thus; there is one decision on the point that the act of limitations is a bar, notwithstanding the direction to pay all just debts; and there is no express decision to the contrary. This being the case, and feeling no inclination to go beyond the principles that have been established, I think myself bound to say, that I do not conceive the direction by *Robert Smith* to pay his just debts, can be fairly construed so as to deprive his executors of the right to plead the act of limitations in such cases as they think proper.

A nonsuit was accordingly ordered. 1 Binney, 209.

See the act of 1785, (post. chap. 1134,) for notes respecting the limitation of actions for real estates.

## CHAPTER CXCVII.


### *An ACT for establishing Orphans' Courts.*

**WHEREAS** by certain laws of this province, now in force, several matters of great importance are directed to be done by the Orphans' Courts, which being discontinued by the repeal of the former law of courts, and not hitherto revived, nor effectually supplied by another law, divers orphans, and persons concerned for them, or intrusted with their estates, labour under great inconveniences: *Be it therefore enacted*, That the Justices of the Court of General Quarter Sessions of the Peace in each county of this province, or so many of them as are or shall be from time to time enabled to hold those courts, shall have full power, and are hereby empowered, in the same week that they are or shall be by law directed to hold the same courts, or at such other times as they shall see occasion, to hold and keep a Court of Record in each of the said counties; which shall be styled **The Orphans' Court**, and to award process, and cause to come before them, all and every such person and persons, who, as guardians, trustees, tutors, executors, administrators, or otherwise are or shall be entrusted with, or any wise accountable for, any lands, tenements, goods, chattels or estate, belonging or which shall belong to any orphan or person under age, and cause them to make and exhibit, within a reasonable time, true and perfect inven-

The Justices of the Court of Quarter Sessions to hold the Orphans' Court.

Their power and duty.



1713.  tories and accounts of the said estates ; and to cause and oblige the Register-General, or such person or persons as, for the time being, shall have the power of probates of wills and granting letters of administration in this province, or their deputies, upon application made in that behalf, to bring or transmit into the said Orphans' Court, true copies or duplicates of all such bonds, inventories, accounts, actings, and proceedings whatsoever, now or hereafter remaining or being in their respective offices or elsewhere, within the limits of their authority, as do or shall concern or relate to the said estates, or any of them ; and to order the payment of such reasonable fees for the said copies, and for all other charges, trouble and attendance, which any officer or other person shall necessarily be put upon in the execution of this act, as they shall think equitable and just. And if, upon hearing or examination thereof, it appears to the Justices of the said Court, that any of the said officers have misbehaved themselves, to the prejudice of any minor, or others concerned for them as aforesaid, the said Justices are hereby required to certify the same accordingly, which shall be good evidence for the party grieved to recover his damages at common law.

Letters of administration, without giving bond and sureties, are void.

Where the security appears to the Orphans' Court not sufficient, they shall compel such administrators to give better.

II. And where any letters of administration shall be granted, and no bond with sureties given, as the law in that case requires, such letters of administration shall be and are hereby declared to be void and of none effect, and that the officer or person that grants the same, and his sureties, shall be, *ipso facto*, liable to pay all such damages as shall accrue to any person or persons by occasion of granting such administration. And the party to whom the same shall be so granted may be sued as executor in his own wrong, and shall be so taken and deemed, in any suit to be brought against him for or by reason of his said administration. Or if, upon such examination, it appears that any of the said officers have not taken sufficient sureties, where the administrators may not be of ability to answer or make good the value of what the decedents' estate doth or shall amount to, then the said Justices of the Orphans' Court are hereby required and empowered to cause all such administrators to give better security to the Register-General, by bonds, in manner and form as the law prescribes, and under such penalties, and with such sureties as the said Justices, after they have heard the objections of creditors or persons concerned (if any such be made sitting the court,) shall approve of. And if it appears that any of the said administrators have embezzled, wasted or misapplied, or suffered so to be, any part of the decedents' estates, or shall neglect or refuse to give bonds, with sureties as aforesaid, then, and in every such case, the said Justices shall forthwith, by their sentence, revoke or repeal the letters of administration granted them, and thereupon the said Register-General, or other person then empowered to grant administrations as aforesaid, where such occasion happens, are hereby required to grant letters of administration to such person or persons, having right thereunto, as will give bonds in manner and form aforesaid, who may have their actions of trover or detinue, for such goods or chattels as came to the possession of the former administrators, and shall be detained, wasted, embezzled or misapplied by any of them and no satisfaction made for the same.

III. *And be it further enacted*, That when any complaint is made 1713.  
to any of the said Justices, that an executrix, having minors of her own, or being concerned for others, is married, or like to be espoused to another husband, without securing the minors' portions or estates, or that an executor, or other person, having the care and trust of minors' estates, is like to prove insolvent, or shall refuse or neglect to exhibit true and perfect inventories, or give full and just accounts of the said estates come to their hands or knowledge, then, and in every such case, the same Justices are hereby required forthwith to call an Orphans' Court, who shall cause all and every such executors and trustees, as also such guardians or tutors of orphans or minors, as have been formerly appointed, or shall at any time hereafter be appointed by the said Court, to give security to the orphans or minors, by mortgage or bonds, in such sums, and with such sureties, as the said courts shall think reasonable: conditioned for the performance of their respective trusts, and for the true payment or delivery, to and for the use and behoof of such orphans as they are concerned for, or such as shall legally represent them, the legacies, portions, shares and dividends of estates, real and personal, belonging to such orphans or minors, so far as they have assets, as also for their maintenance and education, as the said court shall think fit to order, for the benefit and best advantage of such orphans, as is usual in such cases.

In case minors' estates be in danger, &c. the Orphans' Court shall cause the executors to give security.

IV. *And be it further enacted*, That any of the said executors, administrators, guardians or trustees, may, by the leave and direction of the Orphans' Court, put out their minors' money to interest, upon such security as the said court shall allow of; and if such security so taken *bona fide*, and without fraud, shall happen to prove insufficient, it shall be the minors' loss. But if no person who may be willing to take the said money at interest (with such security) can be found by the person so as aforesaid concerned for the minors, nor by any others, then the said executors, administrators, guardians or trustees shall, in such cases, be responsible for the principal money only, until it can be put out at interest as aforesaid.

Minors' money may be put to interest.

V. *Provided always*, That the day of payment of the money so to be put out to interest, at any one time, shall not exceed twelve months from the date of the obligation, or other security given for the same, and so *toties quoties*, when and so often as the said money shall be paid in, or come to the hands of the said executors, guardians or trustees.

Not exceeding twelve months at one time.

VI. *Provided also*, That no executors, administrators or guardians, shall be liable to pay interest, but for the surplusage of the decedents' estate remaining in their hands or power, and belonging to the minors, when the accounts of their administration are or ought to be settled and adjusted before the said Orphans' Courts, or Register-General, respectively.

VII. *And be it further enacted*, That the Justices of the said Orphans' Court, in the said respective counties, shall, by virtue of this act, have full power and authority to exercise all the powers, authorities and jurisdictions, granted or mentioned, or intended to be granted to the Orphans' Court, in and by a law of this province, entitled, *An act for better settling of intestates' estates*, and to do,

Farther authority of the Orphans' Court.



1713. execute and perform all such matters and things as the Orphans' Court, in the said act, or in any other act or law of this province mentioned, might or ought to have done or performed, according to the true intent and meaning thereof; with power also to admit orphans or minors, when, and as often as there may be occasion, to make choice of guardians or tutors, and to appoint guardians, next friends or tutors, over such as the said court shall judge too young or incapable, according to the rules of the common law, to make choice themselves; and at the instance and request of the said executors, administrators, guardians or tutors, to order and direct the binding or putting out of minors apprentices to trades, husbandry, or other employments, as shall be thought fit. And that all guardians and *prochein amis*, which shall be appointed by any of the said Orphans' Courts, shall be allowed and received, without further admittance, to prosecute and defend all actions and suits relating to the orphans or minors, as the case may require, in any court or courts of this province.

This power is preserved to the Orphans' Court by the act for regulating apprentices, passed September 29th, 1770, (post, chap. 616, sect. 5.)

Persons summoned, and not appearing, &c.

VIII. And if any person or persons, being duly summoned to appear in any of the said Orphans' Courts, ten days before the time appointed for their appearance, shall make default, the Justices may send their attachments for contempts, and may force obedience to their warrants, sentences and orders, concerning any matter or thing cognizable in the same courts by imprisonment of body, or sequestration of lands or goods, as fully as any court of equity may or can do.

Appeal to the Supreme Court.

IX. *Provided always*, That if any person or persons shall be aggrieved with any definitive sentence or judgment of the said Orphans' Court, it shall be lawful for them to appeal from the same to the Supreme Court; which appeal, upon security given, as is usual in such cases, shall be granted accordingly.

Discharges for money, &c. by executors, &c. are binding to the orphans.

X. And if any of the said executors, administrators, guardians or trustees, did or shall receive and give discharges for any sums of money, debts, rents or duties, belonging to any orphan or minor, for whom they were or are intrusted, *It is hereby declared and enacted*, That all such discharges or receipts shall be binding to and upon the orphan or minor, when he or she attains to full age, and shall be most effectual in law to discharge the person or persons that take the same.

Bonds how to be cancelled.

XI. And when any of the said minors attain to their full age, and the person or persons so as aforesaid intrusted or concerned for them having rendered their accounts to the Orphans' Court, according to the direction of this and the said other acts, and paid the [minors\*] their full due, then such minors shall acknowledge satisfaction in the said court; but in case any of them refuse so to do, then the said court shall certify how the said persons concerned have accounted and paid; which shall be a sufficient discharge to the guardians or tutors, and to the trustees, executors or administrators, who shall so account and pay, and thereupon all bonds entered into for payment of such orphans' portions shall be delivered up and cancelled.

\* The word [minors] is minor in the original roll.

**XII.** *Provided always, and be it further enacted,* That none of the said Orphans' Courts shall have any power to order or commit the tuition or guardianship of any orphans or minors, or bind them apprentices to any person or persons, whose religious persuasion shall be different from what the parents of such orphan or minor professed, at the time of their decease, or against the minors' own mind or inclination, so far as he or she has discretion and capacity to express or signify the same; or to persons that are not of good repute, so as others of good credit, and of the same persuasion, may or can be found.

What persons may have the charge of orphans or minors.

**XIII.** *Provided also,* That the Justices of the said Courts, and all others concerned in the execution of this act, shall have due regard to the direction of all last wills, and to the true intent and meaning of the testators, in all matters and things that shall be brought before them, concerning the same.

Due regard to be had to wills, &c.

**XIV.** *And be it further enacted,* That all such bonds or obligations as are by this act, or by any other law of this province, directed and required to be given to the Register-General, and all such bonds as by any law are directed to be given by the Register-General, or by any other officers or persons in office whatsoever, in this province, for the due execution of his or their respective offices or employments, are hereby declared to be to and for the use of, and in trust for, the person or persons concerned, and that the benefit thereof shall be extended from time to time, for the relief and advantage of the party aggrieved by the misfeazance or nonfeazance of the officers, that did or shall give the same.

Bonds directed to be given by any law, &c.

to be for the use of the persons concerned, &c.

**XV.** And that when any of the said bonds shall be put in suit, and judgment thereupon obtained, the judgment shall remain in the same nature the bonds were, and that no execution issue out thereupon, before the party grieved shall, by writ of *scire facias*, summon the person or persons against whom the said judgment is obtained, to appear, and shew cause, why execution shall not issue upon the said judgment. And if the party grieved shall prove what damages he sustained, and thereupon a verdict be found for him, the Court of Common Pleas where such suit is, shall award execution for so much as the jury shall then find, with costs, and no more; and the former judgment is hereby declared still to remain cautionary, for the satisfaction of such others as shall legally prove themselves damnified, and recover their damages in manner aforesaid.

**XVI.** And the said Register-General, and all others, in whose hands the said bonds shall be deposited or lodged, are hereby required to give any person injured, that requests the same, a true copy of any of the said bonds, he paying three shillings for the same, and to produce the original in Court, upon any trial that shall be had for the breach of any of them, if required by the Court; and if the person, in whose hands the said bonds shall be lodged or come, shall refuse or delay to give copies thereof, and produce the original in Court as aforesaid, he or they shall forfeit and pay to the party grieved treble damages, to be recovered against the officer that gave such bonds, or his sureties, by action of debt, bill, plaint or infor-

The Register-General, &c. to give copies of such bonds, &c.



1713. mation, in any Court in this province, where no essoin, protection or wager of law, or any more than one imparlance shall be allowed.

Passed March 27th, 1713.—Recorded A. vol. II. page 73. (m)

(m) See the note to chap. 133, ante. page 36.

The constitution of 1776, sect. 26, declared that Orphans' Courts should be held quarterly in each city and county. By the existing constitution it is provided, that the judges of the Court of Common Pleas of each county, any two of whom shall be a *quorum*, shall compose the Orphans' Court thereof. Art. 5, sect. 7. And by the act of April 13th, 1791, (post. chap. 1564, sect. 6,) it is enacted that the Orphans' Court shall be held at such stated times as the judges of the said court, in their respective counties, shall for each year ordain and establish. And by the act of February 24th, 1806, the judges of the Court of Common Pleas of the first district, or any two of them, the president being one, shall compose and hold the Orphans' Court in that district, at such times as they may think proper; and the judges of the Courts of Common Pleas in each county, wherein the term of the Court of Common Pleas is to continue for two weeks, or any two of them, the President being one, shall compose and hold the Orphans' Court in said counties in the first week in each term of the Court of Common Pleas, and at such other times as they may think proper; and the judges of the Court of Common Pleas in each of the other counties, or any two of them, the president being one, shall compose and hold the Orphans' Court, at such times as they may think proper; but any two of the Judges in each county, may hold the Orphans' Court in said county, for the appointment of guardians, and for the transacting, hearing and deciding upon any business in the Orphans' Court: but in case any person or persons interested in the business then before the Court, shall request the same to be continued until the president can attend; in that case the business shall be continued accordingly.

The office of Register General is abolished, formally, by the act of 14th March, 1777, (post. chap. 737,) in pursuance of the then existing constitution, directing a distinct Register's office to be kept in each county; which provision is contained in the present constitution, and acts regulating the judiciary department, in pursuance thereof.

By the intestate act of April 19th, 1794, (post. chap. 1740,) administration accounts are to be examined and allow-

ed by the Orphans' Courts, which are authorized to proceed and call administrators to account, and to make distribution, and the same distributions to decree and settle, and to compel such administrators to observe and pay the same by the due course of the laws of this commonwealth. But no distribution shall be compelled until one year be fully expired after the intestate's death, And the person entitled to a distributive share, shall give bond, with sufficient securities, in the Orphans' Court, to refund, and pay in proportion, to the administrator in case any debts of the intestate should afterwards be sued and recovered, &c.

In case of a deficiency of assets to pay debts, the Orphans' Court of the proper county, upon application by the executors or administrators, is empowered to appoint three or more auditors, to settle and adjust the rates and proportions of the assets due and payable to the respective creditors, whose report thereupon, if approved by the Court, shall be confirmed, and the executors or administrators shall pay such creditors accordingly.

Persons dying intestate, being owners of lands, leaving lawful issue, but not a sufficient personal estate to pay their just debts, the administrators may borrow on mortgage, or sell and convey such part of the land as the Orphans' Court of the proper county shall, in either case, from time to time, think fit to allow, order and direct for defraying debts, &c. but lands contained in any marriage settlement not to be sold, nor any sale to be made before the administrator shall exhibit an inventory, &c. and settle an account upon oath or affirmation, &c. and the manner of proceeding to sell and make report to the Orphans' Court, is particularly directed; and no sale so made by order of the Orphans' Court, shall be liable in the hands of the purchaser for the debts of the intestate, (4 Dallas, 450.)

Section 22, prescribes the powers and duties of the Orphans' Court in making valuation and partition of intestates' estates, and the same power is given, where there is a will, and children, *after born*, are not provided for. And by the supplement to the said act, passed April 4th, 1797, (post. chap. 1938,) when any legatee, or creditor, or person interested in the real or personal estate of a person who has died, or hereafter shall

die, with a last will, or surety in any administration bond, shall declare on oath, &c. that he believes the executors or administrators are wasting or mismanaging the estate, &c. and shall apply to the Orphans' Court of the proper county for security, the said Court shall examine the cause of complaint, and if it appears to them that the same is just, it shall be lawful for the said Court to order such executors or administrators to give bond with sureties, or such further security as they may judge necessary, according to the value of the estate; which securities shall be taken and filed in the said Orphans' Court in the name of the commonwealth, and shall be deemed and considered in trust, &c. and on neglect or refusal for thirty days, the Court shall vacate the letters testamentary, or of administration, and award new letters to be granted, &c. And moreover shall order the first executor or administrator to deliver over to his successor all the goods and chattels, &c. of decedent, remaining unadministered, and account for such as shall have been previously administered, and pay over the balance in such manner and time as the Court shall award and order, &c. and on neglect or refusal to comply with the award and order of the Court touching the premises, the Court, on motion, shall proceed against him or them, as is lawful in cases of contempt, &c.

SECT. 3. In what manner executors and administrators may settle their accounts, and be discharged by the Orphans' Court.

SECT. 9. Particular notice to be given of the time of presenting administration accounts to the Orphans' Court for confirmation and allowance.

And by a further supplement to the intestate act, passed April 2d, 1804, (post. chap. 2486,) where an intestate's estate will not admit of division, and neither of the heirs will take it at the appraisement, the Orphans' Court may decree a sale, and distribute the proceeds as to law and justice shall appertain, and the method of proceeding is prescribed, which is explained and amended by the 2d section of the act of 26th March, 1808, (post. chap. 2965.) And by the 3d section of this latter act in case of a decree by the Orphans' Court for the sale of an intestate's real estate, or any part thereof, the Court is authorized to require and take security from the administrators for the faithful execution of the power committed to them, and to account for and pay over the proceeds thereof in such manner as the said Court shall legally decree.

And by an act passed April 7th, 1807,

(post. chap. 2813,) where an intestate's estate is divided into fewer parts than there are representatives, if any one, or all of the said parts, is or are refused, the Court may decree a sale of the part refused to be taken, in the same manner as if the whole had been appraised and refused to be taken. And where such estate is divided into fewer parts than there are representatives, in order to give the younger children an opportunity of accepting or refusing, the Orphans' Court may grant a rule to shew cause within a certain time, &c. and on neglect to appear, by those who are in seniority, the Court may direct the same to be offered to the next representative in order.

And in case of an intestate's estate lying in more counties than one, the representative, who accepts the estate in one county, shall not have the preference as to lands in any other county. And by sect. 10, where the personal estate of a minor is not sufficient for his maintenance and education, the Orphans' Court may allow the guardian to sell the real estate, or so much as may be necessary for such purposes, taking security from the guardian, &c. and by an act passed April 1st, 1805, where the lands of intestate, consisting of one intire tract, or of several *adjoining* tracts, lie in different counties, the Orphans' Court of the county where the principal mansion is situated, shall award an inquest to make partition or appraise the whole, and particular form of recording such proceedings is prescribed.

See the notes to the different intestate acts before cited.

It is now usual, by the practice of the legislature, in granting pensions to old, invalid soldiers, to appoint trustees, in the particular acts, to expend and appropriate the sums granted, for the benefit of the pensioners, and to direct such trustees to settle their accounts in the Orphans' Courts of the counties, where such trustees reside, and also, in acts authorizing the sale of lands of minors or others, the persons directed to sell, are most commonly obliged by the law, to exhibit their accounts for settlement to the Orphans' Court. Such acts being personal and private, are not printed at large in this edition, and are not necessary to be referred to more particularly.

No appeal lies from the Orphans' Court until definitive sentence. MSS. Reports, Supreme Court.

*Ingersoll* moved for the confirmation of the decree of the Orphans' Court of *Northumberland*, given 26th March, 1792, from which (as it appeared by a certificate he produced,) an appeal had



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been entered. But the *Court* finding that there was no copy of the proceedings lodged with the *prothonotary* refused to receive the motion : and by *Shippen*, Justice ; the regular method of bringing up the record, is by *certiorari* ; and nothing else can stay the proceedings below. *Walker's* appeal. 2 Dallas, 190.

The 4th, 5th, and 6th sections of the act in the text, came fully to the consideration of the Court in the case of *Fox*, administrator of *Hockley v. Wilcocks* and others.

*Fox* settled his account with the Register, from which it was passed to the Orphans' Court for confirmation. With consent of the parties, it was referred by that Court for examination and statement. The next of kin gave notice to *Fox*, the administrator, that he would be required to produce to the auditors, the bank book of his administration, and to state on affirmation whether he had used for his own purposes, any and what monies of the intestate. At the meeting of the auditors, the dispute turned upon two points, the amount of compensation allowed to the administrator in the Register's office, which the next of kin said was too great, and a credit which was claimed by the next of kin for interest upon sums alleged to have been a considerable time in the administrator's hands ; but Mr. *Fox* refused to produce his bank book, or to make the required statement upon affirmation. The auditor allowed the compensation as it stood, and although they refused the interest as it was claimed, they nevertheless charged Mr. *Fox* £.150 as a reasonable compensation for any use he *could* or *did* make of the money remaining in his hands, during his administration ; reporting at the same time, that it did not appear he was ever unprepared to pay any money legally demanded of him.

To this report, both parties filed exceptions ; the administrator, that he had been charged with any sum in the shape of interest ; the next of kin, that he had not been charged enough : But by agreement the report was confirmed, and an appeal made to the Supreme Court, to obtain a decision upon the principle that was to govern the case.

The Chief Justice, after stating the case, delivered the opinion of the Court.

What I consider as the principal point in this case, is, whether the administrator is liable to interest, for the sums of money, which from time to time remained in his hands, before the settlement of his accounts.

By the act of 1713, sect. 4, "Execu-

tors, &c. may, by leave and direction of the Orphans' Court, put out their minor's money to interest, but if no person can be found to take it, who will give good security, they shall only be responsible for the principal." By the same law, sect. 6, "They shall only be liable to pay interest on the surplusage of the estate remaining in their hands, when the accounts of their administration are, or *ought to be*, settled before the Orphans' Court, or Register."

It is therefore the duty of executors, administrators and guardians, not to let money remain unemployed in their hands ; and by fair implication of the words of this act of assembly, if they do through negligence suffer it to remain unemployed, they are responsible for interest ; much more so, if they use the money for *their own purposes*. As the law expressly declares that they are only liable to pay interest on the balance in their hands, when the administration accounts are, or *ought to be* settled, it should seem that they are not liable to interest during twelve months from the death of the intestate, since that period is reckoned reasonable for the settlement of those accounts.

To lay down rules by which it may be ascertained in every case, whether administrators shall pay interest on balances in their hands, is impossible ; because every case depends on its own circumstances. But I think it may be established as a principle, that interest is payable where the administrator has been guilty of neglect in not putting out money, or where he has made use of it himself (1 Washington's Reports, 246.) Both the act of assembly, and, the principles of universal reason concur in this ; and it is agreeable to the authorities from the law of *England*, and the civil law. Still it remains to be decided by the facts in each case, whether the principle is applicable. As to the auditors, no law has been shewn, which satisfies me, that they have power to call for the oath of the administrator as to the use he has made of the money, or to demand the production of his books. At the same time, I cannot help remarking, that the administrator should reflect well before he declines the offer of his adversary, to appeal to his own books : because it *lies on him* to shew what has been done with the money ; and unless he does shew it, in a satisfactory manner, he leaves himself open to the conclusion, of having used it for his own purposes. 1 Binney, 194.

For cases respecting the charge of interest upon the valuation money of lands taken at an appraisement, by or

der of the Orphans' Court, see the notes to the intestate acts.

In *Graham's* appeal, all the Court held, That on the 7th and 12th sections of the act in the text, and the true construction thereof, the Orphans' Court have a power to assign the guardianship of minors under 14, to whom they please, according to their legal discretion; which legal discretion by sect. 12, is confined to the choice of persons of the same religious persuasion, of good repute, and approved by the orphan. If any of these objections should occur, the Court must appoint some other persons, which could not be the case, if they were confined to the guardian in *socage*, or by nurture.

The opinion of the Court is conformable to the invariable practice of every county in the State, from the date of the act to this day; and the construc-

tion given to an act immediately after it has passed, cannot be altered at so distant a period, even although it might have been a little erroneous in the first instance. 1 Dallas, 136.

Where an heir at law takes an intestate's lands at a valuation, the Orphans' Court ought, instead of bonds, which are a mere personal security, to take recognizances, by which the lands themselves would be bound for payment of the distributive shares. 1 Dallas, 265

The Orphans' Court have jurisdiction to ascertain the amount of an advancement made to a child by a father who has died intestate; and also of a debt due by a child, or son-in-law, to a father, previous to the division of the estate, And the Orphans' Court may, if necessary, direct an issue to settle a disputed fact. See *Toke v. Barnett*, 1 Binney, 353.

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# A C T S

OF THE

## General Assembly of Pennsylvania,

Passed at a Session which commenced October, 14th, 1714,  
and ended May 28th, 1715.

1715.

CHARLES GOOKIN, LIEUTENANT-GOVERNOR.

### CHAPTER CCVII.

*An ACT for the assigning of bonds, specialties, and promissory notes.*

Bonds, &c.  
may be as-  
signed.

WHEREAS it hath been held, that bonds and specialties, under hand and seal, and notes in writing, signed by the party who makes the same, whereby such party is obliged, or promises, to pay unto any other person, or his order or assigns, any sum of money therein mentioned, are not, by law, assignable or indorsable over to any person, so as that the person to whom the said bonds, specialties, note or notes, is or are assigned or indorsed, may in their own names, by action at law, or otherwise, recover the same: Therefore to the intent to encourage trade, commerce and credit, *Be it enacted*, That all bonds, specialties, and notes, in writing made or to be made, and signed by any person or persons, whereby such person or persons is or are obliged, or doth or shall promise to pay to any other person or persons, his, her, or their order or assigns, any sum or sums of money, mentioned in such bonds, specialties, note or notes, may, by the person or persons to whom the same is or are made payable, be assigned, indorsed and made over to such person or persons as shall think fit to accept thereof.

Such as-  
signee may  
assign again.

II. And that the person or persons, to whom such bonds, specialties or notes, are or shall be assigned, indorsed or made over, their factors, agents, executors or assigns, may, at his, her or their pleasure, again assign, indorse and make over the same, and so *toties quoties*.

Sue in their  
own names.

III. And that it shall and may be lawful for the person or persons, to whom the said bonds, specialties or notes are assigned, indorsed or made over as aforesaid, in his, her or their own name or

names, to commence and prosecute his, her or their actions at law, for recovery of the money mentioned in such bonds, specialties or notes, or so much thereof as shall appear to be due at the time of such assignment, in like manner as the person or persons to whom the same was or were made payable might or could have done. 1715.

IV. And in every such action, the plaintiff or plaintiffs shall recover his, her or their damages, and costs of suit; and if such plaintiff or plaintiffs shall be non-suited, or a verdict be given against him, her or them, the defendant or defendants shall recover his, her or their costs, against the plaintiff or plaintiffs. Recover damages with costs;

V. And every such plaintiff or plaintiffs, defendant or defendants, respectively, recovering, may sue out execution for such damages and costs, in the like manner as is usual for damages and costs in other cases. and sue out execution.

VI. *And be it further enacted*, That all and every such actions on such promissory notes shall be commenced, sued and brought, within such time as is appointed for commencing or suing actions upon the case, by an act of this province, passed in the eleventh and twelfth years of the late Queen Anne, entitled *An act for limitation of actions*. Limitation of actions on promissory notes, ante. chap. 196, p. 76.

VII. *Provided always*, That no person or persons shall have power, by virtue of this act, to make, issue, or give out, any bonds, specialties or notes, by themselves or servants, than such as they might have made, issued, and given out, if this act had never been made.

VIII. And that all assignments made, of bonds and specialties, shall be under hand and seal, before two or more credible witnesses. Assignments to be under hand, seal, &c.

IX. *Provided also*, That it shall not be in the power of the assignors, after assignment made as aforesaid, to release any of the debts or sums of money really due by the said bonds, specialties or notes. After assignment, the assignee not to release.

Passed 28th May, 1715.—Recorded A. vol. II. page 101. (n)

(n) By the act for incorporating the bank of Pennsylvania, (chap. 1656,) sect. 13,) all notes or bills discounted by that bank are placed on the same footing as foreign bills of exchange, so that the like remedy may be had against the drawers and indorsers, except so far as relates to damages.

The assignee of a bond takes it at his own peril, standing in the same place as the obligee, so as to let in every defalcation which the obligor had against the obligee, at the time of the assignment, or notice of it. The only intent of the act is to enable an assignee of a bond, &c. to sue in his own name, and to prevent the obligee from releasing after assignment. 1 Dallas, 23. So, in the case of a promissory note, the indorsee takes it subject to all equitable considerations, to which it was subject in the hands of the indorser, the original payee. *Ibid.* 441. 4 Dallas, 62. See 2 Binney, 168.

A bill of exchange, without the words "or order," or other words of negotiability, is not indorseable over; so as to enable the indorsee to bring an action on it, against the acceptor, in his own name. 1 Dallas, 194. And the sale and delivery of a promissory note, by a payee, without any indorsement or assignment, is not of itself a legal ground of *assumpsit*, to enable the purchaser in his own name to sue the drawer. *Ibid.* 371. (*Note to former edition.*)

See the notes to the "act for defalcation," ante. p. 51, (chap. 150.) And *Rousset v. Insurance Company of N. A.* 1 Binney, 429, and *Gourdon v. the same*, *ibid.* 433, (in the note,) full abstracts of which cases are given in the note to chap. 150.

What constitutes a legal assignment under this act, see 1 Dallas, 444. In which case it is said by the Court, that the covenant implied by the word *assign*



1715: signed, extends only to this, that the assignee should receive the money from the obligor for his own use: and if the obligee received it, that then the assignor would be answerable over for it.

In *McCullough*, assignee, v. *Houston*, 1 Dallas, 443. The Chief Justice, in delivering the opinion of the Court, among other points, states, "that before this act was passed, it appears that actions by the payee of a promissory note, were not maintained, nor can they since be maintained, otherwise than by extending the English statute of 3 and 4 Ann. chap. 9, sect. 1. Actions upon promissory notes were probably brought here, soon after the passing of the statute, by attorneys who came from England, and were accustomed to the forms of practice in that kingdom, but did not, perhaps, nicely attend to the discrimination with regard to the extension, or adoption of statutes. I have no doubt, indeed, that many acts of parliament, passed, not only before, but subsequent to the union of *England* and *Scotland*, have, by the same means, been introduced and practised upon in *Pennsylvania*: and as experience has proved such proceedings to be beneficial, so constant and uninterrupted usage has given them a legal existence, that cannot now be shaken or destroyed. But the indorsees of promissory notes, according to the best information which we can obtain, have never grounded their actions against the drawer, upon any other basis than the act of assembly now under consideration. Though I think the action by an indorsee against the indorser, must be founded on the statute of *Anne*, and the usage under it, as no such action is given by the act" (in the text.)

The force of this opinion will be seen by attending to the language of the act in the text. In it, there is no provision enabling the promisee, or drawee to bring an action on the note itself: and such action did not lie at common law. Nor does the act extend further than to enable the assignee, or indorsee, to bring an action in his own name against the drawer: but there is no provision that an indorsee shall sue the indorser, according to the custom of merchants, although it is evident that the makers of the act had the statute of *Anne* in view, from their having, in other respects followed the very words of it. Probably the usage that had obtained of bringing actions on such notes, was considered as rendering an express provision unnecessary.

The statute of *Anne*, having thus been adopted, and practised under for more than a century, is reported by the Judges to the Legislature, as being in force here, and part of the law of the land. It gives the remedy by action on promissory notes, according to the custom of merchants, as upon any inland bills of exchange, not on-

ly against persons signing such note, but against any of the persons that indorsed the same, &c.

Only the 1st, 3d, 4th, and 8th sections of this statute are in force here: the second section is supplied by the 6th section of the act in the text.

If the obligee of a bond assigns it, notice ought to be given to the obligor, in order to prevent his paying the money to the person who has thus parted with his interest. By *Shippen*, President. 2 Dallas, 49, 50. See 4 Dallas, 62.

In *Humphries v. Blight's assignees*, 4 Dallas, 371, the Judges of the Circuit Court of the United States, said, "In the case of negotiable paper, or in the case of an assignable bond, we have always thought, that the assignee takes it discharged of all the equity, (as between the original parties,) of which he had no notice. But whenever the assignee has notice of such equity, either positively, or constructively, he takes the assignment at his peril. *Quere*, and see the cases before cited, and to what extent this case is to be understood; and *Ludwick v. Croll*, (infra.)

A simple contract debt, not founded on any note in writing, cannot be assigned so as to enable the assignee to sue in his own name. 1 Dallas, 268.

But after a *bona fide* assignment of a simple contract debt, the Court will not allow the nominal plaintiff to discontinue an action brought to recover it for the use of the assignee. *McCullum v. Cox*. 1 Dallas, 139.

A writing under seal cannot be given in evidence, in an action of *assumpsit* on a promissory note. *January assignee v. Goodman*, 1 Dallas, 208.

On general principles of law, stock contracts cannot be regarded as negotiable; but a contractor may make himself liable as if they were so. The contract was expressed in these words: "On the 18th of April, 1792, I promise to receive from *Joseph Boggs*, or order, \$10,000 six per cents. and pay him for the same, at the rate of 23s. 7½d. per pound.

(Signed,) *Francis Ingraham*."

The assignment was indorsed in these words: "I do hereby authorize *William Reed*, or his order, to tender or deliver the stock within mentioned, and the said *William Reed*, or his order, to receive for the same, the sums of money due and payable therefor, at the rates within expressed. April 7th, 1792.

(Signed,) *Joseph Boggs*."

The plaintiff gave notice of the assignment to the defendant, a short time before the day fixed for the execution of the contract: and the stock was tendered in due form.



The assignee brought this suit in his own name, to recover the amount of the difference due on the contract.

*By the Court.* The action is well brought, as it is founded on a contract, in which the defendant expressly stipulates, that he will receive the stock from, and pay the price to *Joseph Boggs*, or his order. The maxim, *modus et conventio vincunt leges*, applies forcibly to the case. *Reed v. Ingraham*, 3 Dallas, 505, and confirmed, on motion for a new trial, upon mature deliberation. 4 Dallas, 169. *Note*—The other part of the contract, which does not appear in the printed case, is as follows: "*Boggs* promises to transfer to *Ingraham* or his order, the same amount of six per cents. upon his paying to him, or order, the same rate." S. C. MSS. Reports, Supreme Court.

In debt, the facts were, as follow.

B. an inhabitant of N. Carolina, an adventurer, claimed a right to a very large body of land in *Kentucky*, under a survey, pretended to have been made on the 18th June, 1795. This survey bore the marks of fraud on the face of it, and was admitted to be fraudulent by the plaintiff's counsel. On the 8th June, 1796, B. conveyed these lands to the defendant and four others, in consideration of one cent per acre. The defendant paid him £.200, and gave him two bonds conditioned for the payment of £.275 each, by instalments. One of these bonds had been assigned to one E. whom defendant had satisfied. The other, on which this suit was brought, had been assigned to plaintiff on the 24th June following. No part of the consideration appeared to have been paid by the other purchasers, for their proportion of the lands; and B. disappeared shortly after the conveyance. While the defendant believed he had a good title to the land, and within two or three months after the contract, having heard that the plaintiff had got one of the bonds by assignment, he acknowledged, in the presence of two witnesses, that he must pay it off. On this circumstance the plaintiff's counsel relied for the recovery.

*By the Court.* (*Yeates* and *Smith*, Justices.) If the plaintiff, ignorant of the unfairness of the original transaction, had been induced to obtain the assignment by the defendant's promising to pay it, (1 *Washington's* reports, 392,) the latter ought to be bound by his engagement, notwithstanding the great hardship of the case; for he would be the cause of the deception, and his admissions would operate as a new contract between himself and the plaintiff. But the acknowledgments in the present in-

stance, could not have influenced the plaintiff's conduct, having been made several months after the assignment.

Equity will relieve against a plain mistake, or against ignorance of title, though not under all given circumstances. To make a receipt in full of all demands, a conclusive bar, it must be given with full knowledge of all the facts; and one may avoid a promise, by shewing that there was no consideration for it.

As between the obligor and obligee, who had swindled him already out of £.475, no possible doubt could exist. The assignee of a bond takes it at his own peril, subject to every defence which might be set up against the obligee; and the admissions of the defendant, after the assignment, while his delusion continued, as the fancied proprietor of a large tract of country, cannot conclude him on any principle of law, equity, or good conscience.

The plaintiff thereupon suffered a non suit. *John Ludwick*, assignee of *Jacob Bollinger*, v. *Michael Croll*, *Nisi Prius*, *Berks* county, September, 1799, MSS. Reports. See 2 *Binney*, 168.

In debt on bond. The facts material to the present subject, were as follow:

*Robert Johnson*, the defendant's testator, had executed the bond to *Mary Goodwin*. *R. Johnson*, the obligor, made his will on the 26th of July, 1769, and thereby appointed *Caleb Johnson*, the now defendant, and S. I. since deceased, his executors, and soon afterwards died.

*M. Goodwin*, the obligee, made her will on the 27th November, 1782, and thereby appointed *Francis Goodwin*, and the aforesaid *Caleb Johnson*, her executors.

On the 14th of July, 1796, *Frances Goodwin*, assigned the obligation to the plaintiff.

It was objected that the present suit could not be supported by the plaintiff as assignee, *Caleb Johnson*, one of the executors of the obligee, not having joined in the assignment; that it was the folly of *Mrs. Goodwin* to nominate him her executor, who was one of the executors of her obligor, and known by her to be such.

*By the Court.* (*Shippen*, C. J. and *Yeates*, J.) The testatrix might not have known this fact; but, at any rate, if this technical nicety was intended to be insisted on, it should have been pleaded in abatement, like the case of partowners not sued. Perhaps it would be difficult, if not impracticable, to have given the plaintiff a better writ. *Caleb Johnson* was not compellable to join in the assignment, nor could he be reasonably expected to join in a suit against



1715.

himself. Under such circumstances, a bill would certainly be supportable in chancery against the now defendant. Courts in this state adopt the rules of equity, which form a part of our law. We are not necessarily called upon to say in the present instance, how far we should feel ourselves obliged to follow the practice of a Court of Chancery, to prevent injustice, if even a plea in abatement had been put in to the form of the assignment. *David Chalfont*, assignee of *Frances Goodwin*, one of the execu-

tors of *Mary Goodwin v. Caleb Johnson*, surviving executor of *Robert Johnson*. *Circuit Court, Chester county, May, 1800*, MSS. Reports.

The assignor of a bond is a competent witness to prove that it was fraudulently obtained by him, or that it was given to raise money for the obligor, and that he used it to pay his own debt. Fraud, either in the execution, or the consideration of a bond, may be given in evidence under the plea of payment. 2 Binney, 154.

## CHAPTER CCVIII.

### *An ACT for acknowledging and recording of deeds.*

Offices for  
recording of  
deeds esta-  
blished.

*BE it enacted*, That there shall be an office of record in each county of this province, which shall be called and styled, *The Office for recording of Deeds*; and shall be kept in some convenient place in the said respective counties, and the recorder shall duly attend the service of the same, and, at his own proper costs and charges, shall provide parchment, or good large books, of royal or other large paper, well bound and covered, wherein he shall record, in a fair and legible hand, all deeds and conveyances, which shall be brought to him for that purpose, according to the true intent and meaning of this act.

Deeds before  
recorded, to  
be acknow-  
ledged, &c.

II. *And be it further enacted*, That all bargains and sales, deeds and conveyances of lands, tenements and hereditaments, in this province, may be recorded in the said office; but before the same shall be so recorded, the parties concerned shall procure the grantor or bargainer named in every such deed, or else two or more of the witnesses (who were present at the execution thereof,) to come before one of the Justices of the Peace of the proper county or city where the lands lie, who is hereby empowered to take such acknowledgment of the grantor, if one, or of one of the grantors, if more.

or proved.

The acknow-  
ledgment or  
proof to be  
certified.

III. But in case the grantor be dead, or cannot appear, then the witnesses brought before such justice shall by him be examined upon oath or affirmation, to prove the execution of the deed then produced: Whereupon the same justice shall, under his hand and seal, certify such acknowledgment or proof upon the back of the deed, with the day and year when the same was made and by whom: And that after the recorder has recorded any of the said deeds, he shall certify on the back thereof, under his hand and seal of his office, the day he entered it, and the name or number of the book or roll, and page, where the same is entered.

Deeds made  
out of this  
province,  
how to be  
proved.

IV. *And be it further enacted*, That all deeds and conveyances made and granted out of this province, and brought hither and recorded in the county where the lands lie (the execution whereof being first proved by the oath or solemn affirmation of one or more of the witnesses thereunto, before one or more of the justices of the peace of this province, or before any mayor or chief magistrate or officer, of the cities, towns or places, where such deeds or conveyances are or shall be made or executed, and accordingly certified under the common or public seal of the cities, towns or places, where such deeds or conveyances are so proved respectively) shall



be as valid, as if the same had been made, acknowledged or proved, 1713.  
in the proper county where the lands lie in this province.

V. *And be it further enacted,* That all deeds and conveyances made or to be made, and proved or acknowledged, and recorded as aforesaid, which shall appear so to be, by indorsement made thereon, according to the true intent and meaning of this act, shall be of the same force and effect here, for the giving possession and seisin, and making good the title and assurance of the said lands, tenements and hereditaments, as deeds of feoffment, with livery and seisin, or deeds enrolled in any of the king's courts of record at Westminster, are or shall be in the kingdom of Great Britain. And the copies or exemplifications of all deeds so enrolled, being examined by the recorder, and certified under the seal of the proper office (which the recorder, or keeper thereof, is hereby required to affix thereto) shall be allowed in all courts where produced, and are hereby declared and enacted to be, as good evidence, and as valid and effectual in law, as the original deeds themselves, or as bargains and sales enrolled in the said courts at Westminster, and copies thereof, can be; and that the same may be shewed, pleaded and made use of accordingly.

The force and effect of deeds acknowledged and recorded.

Certified copies to be evidence.

VI. *And be it further enacted,* That all deeds to be recorded in pursuance of this act, whereby any estate of inheritance in fee-simple shall hereafter be limited to the grantee and his heirs, the words grant, bargain, sell, shall be adjudged an express covenant to the grantee, his heirs and assigns, *to wit:* That the grantor was seized of an indefeasible estate in fee simple, freed from incumbrances done or suffered from the grantor (excepting the rents and services due to the lord of the fee) as also for quiet enjoyment against the grantor, his heirs and assigns, unless limited by express words contained in such deed, and that the grantee, his heirs, executors, administrators and assigns, may in any action, assign breaches, as if such covenants were expressly inserted. *Provided always,* That this act shall not extend to leases at rack-rent, or to leases not exceeding one-and-twenty years, where the actual possession goes with the lease.

The force and effect of the words grant, bargain, sell, &c.

VII. *And be it further enacted,* That if any person shall forge any entry of the said acknowledgments, certificates or indorsements, whereby the freehold or inheritance of any man may be charged, he shall be liable to the penalties against forgers of false deeds, &c. And if any person shall perjure himself in any of the cases herein abovementioned, he shall incur the like penalties, as if the oath or affirmation had been in any court of record.

The penalty against forgery and perjury, [ante. page 4.]

VIII. *And be it further enacted,* That no deed or mortgage, or defeasible deed, in the nature of mortgages, hereafter to be made, shall be good or sufficient to convey or pass any freehold or inheritance, or to grant any estate therein for life or years, unless such deed be acknowledged or proved, and recorded, within six months after the date thereof, where such lands lie, as herein before directed for other deeds.

No mortgage good, unless acknowledged and recorded in six months.

IX. *And be it further enacted,* That any mortgagee of any real or personal estates in this province, having received full satisfaction and payment of all such sum and sums of money as are really

Mortgagee having received his money, shall



1715. due to him by such mortgage, shall, at the request of the mortgager, enter satisfaction upon the margin of the record of such mortgage recorded in the said office, which shall forever thereafter discharge, defeat and release the same; and shall likewise bar all actions brought, or to be brought thereupon.

enter satisfaction.  
[Manner of compelling it, and the penalty for not doing it. See the act of 13th April, 1791, (post. chap. 1564, sect. 14,) with respect to judgments generally.]

X. And if such mortgagee, by himself or his attorney, shall not, within three months after request and tender made for his reasonable charges, repair to the said office, and there make such acknowledgment as aforesaid, he, she or they, neglecting so to do, shall for every such offence, forfeit and pay, unto the party or parties aggrieved, any sum not exceeding the mortgage-money, to be recovered in any Court of Record within this province, by bill, plaint or information.

Passed May 28th, 1715.—Recorded A. vol. II. page 102. (o.)

(o) By a supplement, (chap. 704,) deeds affecting real estate are directed to be acknowledged or proved before a Judge of the Supreme Court, or one of the Justices of the Common Pleas of the county where the lands lie, and recorded within six months, if executed here, and within twelve months, if executed abroad, from the execution of such deeds; otherwise the same shall be adjudged fraudulent and void against any subsequent purchaser or mortgagee for a valuable consideration, unless they are recorded, before the deed of the purchaser or mortgagee is proved and recorded; but the provision does not extend to leases not exceeding twenty-one years, where actual possession has gone with the deeds. The supplement further provides, that where grantors and witnesses are deceased, or cannot be had, any Justice of the Supreme Court, or any Justice of the Common Pleas of the proper county, may take proof of the handwriting of the witnesses, or (if that cannot be had,) proof of the handwriting of the grantors, which being certified by the Justice, the deed shall be recorded as is usual in other cases. Regulations are, likewise, introduced respecting the mode and priority of recording deeds; and the fees and sureties of the several Recorders. By an act of the 24th of February, 1770, (post. chap. 605,) provision is made to effectuate conveyances by *femes covert*. By the old constitution, (sect. 34,) it was ordained, that an office for recording of deeds should be kept in each city and county; which provision is adopted by the existing constitution, (art. 5, s. 11,) with an additional clause upon the subject, (art. 6, s. 3,) that the offices of the Recorders shall be kept in the county town of the respective counties, unless the Governor shall, for special reasons, dispense therewith, for any term not exceeding five years after the county shall have been erected. By an act of the 14th of March, 1777, (chap. 737,) Recorders, &c. were appointed in

the several counties; their respective official sureties were regulated; their powers, duties, and perquisites, under the preceding laws, confirmed; and provision was made for surrendering the records to their successors. By an act of the 31st of August, 1778, (chap. 793,) provision is made for giving validity to the acknowledgment and probate of deeds had and taken before any of the members of the Council of Safety, (while that Council was subsisting,) or any of the enumerated Justices of the Peace appointed by the Convention, until Justices of the Court of Common Pleas were appointed; or any member of the Supreme Executive Council, at any time before the passing of the act; provided such deeds were recorded in the proper office within nine months. By an act of the 23d of September, 1783, (chap. 1029,) it was provided, that all mortgages, executed between the 1st of January, 1776, and the 18th of June, 1778, which had been at any time since recorded, or which should be recorded within six months, should be as valid, as if recorded within six months after the execution: except against subsequent judgments, statutes, recognizances, attainders, forfeitures or liens whatsoever, or against *bona fide* purchasers and mortgagees. By an act of the 8th of April, 1785, (chap. 1152,) it is enacted, that all acknowledgments and probates of deeds made before the President of the Court of Common Pleas for the county of Philadelphia, or of any other county, shall be as available as if made before one of the Judges of the Supreme Court. By an act of the 13th of April, 1791, (chap. 1564, sect. 10,) it is enacted, that all acknowledgments and probates of deeds made before any one of the associate Judges of the Courts of Common Pleas shall be as available, as if made before a Judge of the Supreme Court, or a President of the Common Pleas. By an act of the 30th of September, 1791, (chap. 1590, sect. 9,) it is enacted, that the Mayor and



Recorder of the city of Philadelphia, the Master of the Rolls, and the Justices of the Peace, shall have power to receive the proof or acknowledgment of all instruments of writing, in the same manner as Justices of the Peace might or could have done under the act in the text; or as Justices of the Common Pleas might do under the act of the 18th of March, 1775, (chap. 704,) or as might be done under the act of the 24th of February, 1770; (post. chap. 605,) for the better confirmation of the estates of persons holding or claiming under *femes covert*. By the act of the 13th of April, 1791, (chap. 1564, sect. 11,) it is provided, that Sheriff's deeds for lands sold, under writs of execution from the Supreme Court, may be acknowledged before one of the Justices at Nisi Prius, in the county where the lands lie: and if the sale is under a testatum, the acknowledgment may be in the Common Pleas of the proper county. See likewise, acts empowering the Justices of the Supreme Court and of the Common Pleas to supply defects in titles to lands by lost or defaced deeds, (chap. 1210, chap. 1640;) providing for the safe-keeping of the records in the several counties, (chap. 1484;) regulating the fees of the Master of the Rolls and Recorders of Deeds, and punishing extortion, (chap. 1852;) and raising a revenue of fifty cents upon every patent recorded by the Master of the Rolls, over and above one thousand patents in each year. (chap. 1854.) (*Note to former edition.*)

By an act passed February 7th, 1803, the Aldermen of the city of Philadelphia are empowered to take the acknowledgment of deeds, and also the separate examination of *femes covert*, for lands, &c. within the city of Philadelphia, and to receive therefor, the same fees as Justices of the Peace receive, (post. chap. 2309.) And by an act passed January 20th, 1806, (post. chap. 2619,) the Aldermen are empowered to take similar acknowledgments of deeds, &c. for lands, &c. within the county of Philadelphia.

And by an act passed March 28th, 1803, (post. chap. 2355,) recognizances and bonds, taken from Sheriffs and their sureties, shall be taken and duly recorded by the Recorder of deeds of the proper county; and when indorsed by him as duly recorded, shall forthwith be transmitted to the Secretary of the Commonwealth, who shall file the same in his office; copies whereof, under the hand and seal of office of the said Secretary or Recorder, shall be legal evidence in any suit or suits brought thereon, &c.

The references in the note to the former edition, respecting the acknowledgment of Sheriff's deeds before the Judges at Nisi Prius, it will be observed, are no longer useful, since the abolition of that Court,

in any part of the State, except the city and county of Philadelphia. See the note to chap. 152, ante. pa. 61.

So, with respect to the Master of the Rolls, whose office was abolished by an act passed March 29th, 1809.

The following notes are from the former edition:

A deed executed by two persons with one ink, and one wax seal, attested by one witness only, and merely proved by him before a Justice, without being recorded, was allowed to be read in evidence. The supplement, (post. chap. 704,) certainly allows the proof of one witness to be sufficient. 1 Dallas, 63.

A deed proved by the affidavit of one of the witnesses before a Justice of the Common Pleas, but not recorded, was read in evidence. The recording does not contribute to the proof of the deed, which is established by the oath before the Justice: the recording only gives the deed a special operation by the express provisions of the act. 1 Dallas, 93.

A deed executed in *England* and recorded here, and a deed executed in *England*, and acknowledged here, though not recorded, were both read in evidence. 1 Dallas, 66.

It was adjudged in the Circuit Court of the United States, for the *Pennsylvania* district, that the six months allowed for recording mortgages, were *Kalendar* months. 2 Dallas, 302.

A mortgage, though not recorded within six months, is good against the mortgagor. 1 Dallas, 434.

A mortgage, acknowledged and recorded the day after the declaration of independence, by officers appointed under the Proprietary Government, was nevertheless held to be valid against a subsequent judgment creditor, and *bona fide* purchaser, for a valuable consideration. 1 Dallas, 48.

The acknowledgment of a Sheriff's deed in Court, and registering it in the Prothonotary's office, is a sufficient recording within the act. 1 Dallas, 68.

For the proceedings to recover on a mortgage, see chap. 152, ante. pa. 60.

Since the former notes, the following cases have been decided:

*Stroud*, assignee, v. *Lockart & al.*

*Scire facias* on a mortgage. The mortgage had not been recorded conformably to the act of Assembly; and *Lockhart* had purchased the premises. But on the trial, the plaintiff proved, that *Lockhart* knew of the existence of the mortgage at the time of his purchase, and said he would have to pay it, although it was not then recorded.

*By the Court.* The case is too plain for controversy. The plaintiff must have a verdict; and all the trouble of the jury will be to calculate interest.

Verdict for plaintiff. 4 Dallas, 155.

1718.



1715.

In *Pennsylvania*, any one by having recourse to the offices of the Recorders, may ascertain the previous liens upon the property which he wishes to purchase. The records are constructive notice to all mankind. (1 Dallas, 435.) It is not a general custom in this government for mortgagees to receive the possession of title deeds. It may be done in some instances by very prudent persons who lend out money, *ex abundanti cautela*, but it is far from being generally practised. And, by *M<sup>r</sup> Kean, C. Justice*: In one case only can the mortgagee be affected by suffering the title deeds to remain in the hands of the mortgagor; and that is, where after the execution of the mortgage, and before the same is recorded, the mortgagor, on the strength of the title papers in his hands, borrows money on a second mortgage. If this second loan was made without knowledge of the first incumbrance, and before the first mortgage was put into the Recorder's office, there I should apprehend the first mortgagee should be postponed.

*Evans's executors v. Nicholas's administrators. Berks, May, 1792. MSS. Reports:*

It is settled by several decisions, that the words "grant, bargain and sell," in the 6th section, without more, when used in a deed, do not imply a warranty, or covenant of good title; but extend only to incumbrances made or suffered, and for quiet enjoyment, by, or from the grantor, and those claiming under him. *MSS. Cases. See 2 Binney, 95.*

The four remaining sections of this act provided for the appointment of Recorders of deeds; prescribed the amount of the official surety to be given before they entered on their duties, regulated their fees, and declared the punishment of extortion: but all these sections have been repealed and supplied, as will appear by the note to former edition; ante. page 96.

With respect to acknowledgments of deeds by *femes covert*, see post. chap. 605, and the notes thereto subjoined.

# A C T S

OF THE

## General Assembly of Pennsylvania.

Passed at a Session which commenced October 14th, 1717, and continued by adjournments to the 31st May, 1718.

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WILLIAM KEITH, LIEUTENANT GOVERNOR.

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1718.



### CHAPTER CCXXVI.

*An ACT concerning feme-sole traders. (p)*

**WHEREAS** it often happens that mariners and others, whose circumstances as well as vocations oblige them to go to sea, leave their wives in a way of shop-keeping : and such of them as are industrious, and take due care to pay the merchants they gain so much credit with, as to be well supplied with shop-goods from time to time, whereby they get a competent maintenance for themselves and children, and have been enabled to discharge considerable debts, left unpaid by their husbands at their going away ; but some of those husbands, having so far lost sight of their duty to their wives and tender children, that their affections are turned to those, who, in all probability, will put them upon measures, not only to waste what they may get abroad, but misapply such effects as they leave in this province : For preventing whereof, and to the end that the estates belonging to such absent husbands may be secured for the maintenance of their wives and children, and that the goods and effects which such wives acquire, or are entrusted to sell in their husband's absence, may be preserved for satisfying of those who so entrust them, *Be it enacted*, That where any mariners or others are gone, or hereafter shall go, to sea, leaving their wives at shop-keeping, or to work for their livelihood at any other trade in this province, all such wives shall be deemed, adjudged and taken, and are hereby

Who shall be  
deemed  
feme-sole  
traders.

(p) For the proceedings respecting 1 Dallas, 409. For the punishment of divorces and alimony, see chap. 1176 ; bigamy, see ante. chap. 123, pa. 29.



1718. declared to be, as feme-sole traders, and shall have ability and are by this act enabled, to sue and be sued, plead and be impleaded at law, in any court or courts of this province, during their husbands' natural lives, without naming their husbands in such suits, pleas or actions: And when judgments are given against such wives for any debts contracted, or sums of money due from them, since their husbands left them, executions shall be awarded against the goods and chattels in the possession of such wives, or in the hands or possession of others in trust for them, and not against the goods and chattels of their husbands; unless it may appear to the court where those executions are returnable, that such wives have, out of their separate stock or profit of their trade, paid debts which were contracted by their husbands, or laid out money for the necessary support and maintenance of themselves and children; then, and in such case, execution shall be levied upon the estate, real and personal, of such husbands, to the value so paid or laid out, and no more. (q)

Sales, &c. of lands made abroad by absent husbands are void, unless &c.

II. *And be it further enacted*, That if any of the said absent husbands, being owners of lands, tenements, or other estate in this province, have aliened, or hereafter shall give, grant, mortgage or alienate, from his wife and children, any of his said lands, tenements or estate, without making an equivalent provision for their maintenance, in lieu thereof, every such gift, grant, mortgage or alienation, shall be deemed, adjudged and taken to be null and void. (r)

The husband being shipwrecked, &c. may sell, &c.

III. *Provided nevertheless*, That if such absent husband shall happen to suffer shipwreck, or be by sickness or other casualty disabled to maintain himself, then, and in such case, and not otherwise, it shall be lawful for such distressed husband to sell or mortgage so much of his said estate, as shall be necessary to relieve him, and bring him home again to his family, any thing herein contained to the contrary notwithstanding.

The lands of the husband staying away or living, in adultery, may be seized and taken in execution, &c. See the 30th section of the act of 9th March, 1771, (post. chap. 635.) for the method of proceeding where men desert their wives or children, &c.

IV. But if such absent husband, having his health and liberty, stays away so long from his wife and children, without making such provision for their maintenance before or after his going away, till they are like to become chargeable to the town or place where they inhabit; or in case such husband doth or shall live in adultery, or cohabit unlawfully with another woman, and refuses or neglects, within seven years next after his going to sea, or departing this province, to return to his wife, and cohabit with her again; then, and in every such case, the lands, tenements and estate, belonging to such husbands, shall be and are hereby made liable and subject to be seized and taken in execution, to satisfy any sum or sums of money, which the wives of such husbands, or guardians of their children, shall necessarily expend or lay out for their support and maintenance; which execution shall be founded upon process of attachment against

(q) By an act of the 19th September, 1785, (chap. 1176, sect. 4,) if either husband or wife marry again, on rumour of the death of the other party, who has been absent for two years, he or she shall not be liable to the pains of adultery; but the unmarried party may have the wife or husband, (as the case may be,) restored, within one year after his or her return.

(r) Mariners, or persons being at sea, or a soldier being in actual military service, may dispose of their moveables, wages, and personal estate, as they might have done, before the act concerning wills was passed. (Ante. chap. 133, sect. 7.) page 35.

such estate, wherein the absent husband shall be made defendant; any law or usage to the contrary in any wise notwithstanding.

1718.

Passed 22d February, 1718.—Recorded A. vol. II. page 166. (s)

(s) Where the lessor of the plaintiff claimed under a deed from husband and wife, the wife, in the absence of her husband, was offered as a witness. A release was executed and delivered to her at the bar, by her son, the lessor of the plaintiff, releasing all claims against her husband and herself, under the implied covenant of warranty in the deed. She was at first excepted to by the defendant's counsel, because her husband was not present to accept the release. But on the authority of *Fowler v. Welford*, Dougl. 134, the objection was waived, and the witness was sworn. *Bioren's Lessee v. Kup, Berks, Nisi Prius*, October 1795, MSS. Reports.

An action of *crim. con.* is not supportable by the husband after an agreement of separation made with his wife. MSS. Reports, Supreme Court.

A wife, living separate from her husband, executes a release to him of her right of dower, in consideration of a certain sum being secured to her annually, for life; and after his death, for eight years, receives the same. The jury may presume, from these circumstances, a redelivery of the deed by her. *Evans v. Evans, Lancaster*, April, 1803, *Nisi Prius*, MSS. Reports.

## CHAPTER CCXXIX.

*An ACT for erecting of houses of correction and work-houses, in the respective counties of this province.*

WHEREAS the Proprietary, and first Adventurers, in their principal model of this government, proposed, that for crimes inferior to murder the punishments might be by way of restitution, fine, imprisonment, and such like; and where the offender proved not of ability to make such satisfaction, then he should be kept in prison or house of correction at hard labour; but no effectual care hath been yet taken to erect such houses, by reason whereof many evil-doers escape unpunished, and servants, who, for their neglect and abuses, should be kept to work in such houses, are become incorrigible: Therefore, *Be it enacted*, That from and after the first day of May, which will be in the year of our Lord one thousand seven hundred and eighteen, from time to time, it shall and may be lawful to and for the justices of the peace of the city of Philadelphia, in conjunction with the justices of the peace of the county of Philadelphia, and for the justices of the peace of the other respective counties of this province, assembled at any Quarter Sessions of the peace within the same respective counties, or the major part of them, to set down and make orders for building, erecting, or causing to be built and erected, or provided, one or more houses of correction and work-houses, with convenient back sides or yards thereunto adjoining, in some convenient places within their several counties or towns corporate: For the doing and performing whereof, and for the providing stocks of money, goods, and all other things necessary for the same, all such orders as the said justices, or the major part of them, shall from time to time take, reform or set down in any of the said Quarter Sessions, for erecting or providing such houses, raising the said stocks, and governing of the same, as also for the correcting and punishment of offenders to be

Justices at their Quarter Sessions may make orders for building houses of correction, &c



1718. committed there, shall be of full force, and be duly performed and put in execution. Which said houses shall be purchased, conveyed or assured unto such person or persons as by the justices of the peace, or the major part of them, in their Quarter Sessions of the peace, to be holden within every county of this province, upon trust, to the intent the same shall be used and employed for the keeping, correcting and setting to work of all rogues, vagabonds, or sturdy beggars, and other idle and disorderly persons, who by the laws and usage of Great-Britain, or by the laws of this province, are to be kept, corrected, or set to work in such houses and back sides.

The time limited for the building of the said house.

II. *And be it further enacted*, That within the space of three years, after the twenty-fifth day of March, in the year of our Lord, one thousand seven hundred and eighteen, a house of correction or work-house shall be built in the city of Philadelphia, at the charge of the said city and county of Philadelphia; and a house of correction or work-house shall be built in Chester, at the charge of the county of Chester; and another house of correction or work-house shall be built in Bristol, at the charge of the county of Bucks.

The officers how to be appointed.

III. *And be it further enacted*, That by the major part of the justices of the peace for the said city and county of Philadelphia, and for the counties of Chester and Bucks, respectively, in their respective Quarter Sessions assembled, there shall be elected and chosen, out of the most able and honest inhabitants and freeholders of the said city and county of Philadelphia, and of the said counties of Chester and Bucks, respectively, a President, a Treasurer, and Assistants, for the houses of correction, work-house or work-houses, in the said city and respective counties: And that upon the vacancy, by death or otherwise, of any of the said Presidents, Treasurers or Assistants, in the said respective counties, the power to elect others in their room shall be in the major part of the respective justices of the peace, who, in their General Quarter Sessions, from time to time, shall accordingly supply vacant places.

Who shall be accountable to the justices in their sessions.

IV. And the said President, Treasurer and Assistants, for the time being, shall be accountable for all their disbursements, and other proceedings, to the said justices, or the major part of them, who, at every Quarter Sessions, are hereby directed and required to examine and inspect the accounts and all other proceedings of the said President, Treasurer and Assistants; and in case any notorious neglect, embezzlement, or breach of trust, shall at any time appear to the justices against all or any one of the said officers, by them appointed as aforesaid, then the said justices are hereby empowered to dismiss and displace all such offenders, and to elect others in their room.

Incorporating clause.

V. And that nothing may be wanting to render effectual the good intent of this act in all its parts, *Be it enacted*, That the said President, Treasurer and Assistants, for the time being, respectively, shall for ever hereafter, in name and fact, be bodies politic and corporate in law, to all intents and purposes; and shall have a perpetual succession, and may sue or plead, or be sued and impleaded, by the name of the President, Treasurer and Assistants, for the poor of the said respective counties, in all Courts and places of judicature within this province; and by that name every of the said corporations

shall and may purchase or receive any lands, tenements or hereditaments, not exceeding the yearly value of three hundred pounds per annum, of the gift, alienation or devise, of any person or persons, who are hereby enabled to transfer and grant the same, and any goods and chattels whatsoever, in, to or for the use and benefit of the corporations aforesaid.

1718.

**VI.** *And be it further enacted,* That the said President, Treasurer and Assistants, or one of them, at least, in each county aforesaid, respectively, shall give punctual and constant attendance at the work-houses and houses of correction to which they respectively belong, there to receive and execute the orders given by the commitments which shall happen to be made from time to time by any justice of the peace, or other magistrate, having legal power to commit and send to the work-houses all vagabonds, unruly servants, and other idle or disorderly persons; and the said officers, in each county respectively, shall make return to every court of Quarter Sessions, duly, of their proceedings in the premises.

The officers  
to give at-  
tendance at  
the work-  
houses?

**VII.** *And be it further enacted,* That when the President, Treasurer and Assistants of any of the said corporations shall certify, under their hands and seals, their want either of a present stock for the beginning of the work, or for supply thereof for the future, and what sum or sums of money they shall think fit for the same, to the justices of the peace of the said respective counties, assembled in their Quarter Sessions, the said justices are hereby required from time to time to set down and ascertain such sum and sums of money, as they shall deem competent for the purposes aforesaid, and cause the same to be raised as county rates are usually levied, so that they do not exceed, for the city and county of Philadelphia, the yearly value of four hundred pounds; for the county of Chester, the yearly value of two hundred pounds; and for the county of Bucks, the yearly value of one hundred pounds.

Upon their  
certifying  
the want of  
stock, &c.  
the said Jus-  
tices may  
cause the  
same to be  
raised.

**VIII.** *And be it further enacted,* That the President, Treasurer and Assistants of any of the said corporations, or houses of correction or work-houses, are hereby empowered to choose and entertain all such officers, as shall be needful to be employed in and about the premises, and them, or any of them, to remove, as they shall see cause; and upon such removal, or death of any of them, to choose others, and to make them reasonable allowances for their services out of the said stock; and that all sheriffs, constables, and all other officers and ministers of justice, shall be aiding and assisting to the said corporation or corporations, and to all such officers as shall be employed by them in the execution and performance of the said service.

Under offi-  
cers how to  
be chosen,  
&c.

Passed 22nd February, 1718.—Recorded A. vol. II. page 172. (t)

(t) The whole of this act, is confined to the counties mentioned in the second section.

By the act of 1705, ante, page 56, (chap. 151,) The respective prisons shall be work-houses, until others are provided, &c.

(chap. 283, not printed in this edition,) the county buildings for Bucks were directed to be erected at *New Town*, instead of *Bristol*. And by an act passed March 1st, 1745-6, the first prison built at *New Town* (a new one having been erected) is declared to be the house of correction and work-house for said county. By an act

By an act passed March 20th, 1724,



1718. passed February 28th, 1810, The seat of justice is removed from New town to a more central situation, to be fixed by commissioners, who have established it at *Doyle's Town*, and a new Court house, prison and county offices are to be erected.

On the 26th February, 1773, an act was passed for erecting a new gaol, work-house, and house of correction in the city of Philadelphia, (chap. 673.)

By an act passed February 28th, 1780, (post. chap. 867,) all Court houses, gaols, prisons and work houses, with the lots, &c. are vested in the commonwealth, for the leases, &c. for which the same were respectively limited and appointed.

By an act passed February 21st, 1767, (chap. 555,) "To prevent the mischiefs arising from the increase of vagabonds, and other idle and disorderly persons, &c." There is a description of what sort of per-

sons shall be deemed idle and disorderly, &c. and a penalty on the constable for neglecting to apprehend them, on notice by the inhabitants, &c. and the manner is prescribed in which the justice is to commit them to the work-house, &c. The manner of proceeding, on presentment being made to the sessions in any county of the want of a work-house, &c. and the justices in sessions are to appoint the keeper of the work-house, &c. with respect to the city of *Philadelphia*, special provisions are made by an act consolidating the poor laws, &c. passed March 29th, 1803, (post. chap. 2357,) by which all preceding acts respecting the poor within the city and liberties are repealed and supplied; and see the second section of the act of April 2d, 1803, (post. chap. 2379.)

See the notes to chap. 236, post. 105.

## CHAPTER CCXXXV.

*An ACT empowering the Justices to settle the prices of liquors in public houses, and provender for horses in public stables.*

The justices, &c. to set prices on liquors, &c.

WHEREAS, it has been the practice of tavern-keepers, ale-house-keepers and inn-holders, to exact excessive rates for their wine, beer, cyder and other liquors, and also provender for horses, without regard to the plenty and cheapness thereof: *Be it therefore enacted*, That the justices of the peace of the respective counties of this province, and also the Mayor, Recorder and Aldermen of the city of Philadelphia, shall have full power, four times in the year, to wit, at the general sessions of the peace, held for the said counties and city respectively, to set such reasonable prices on all liquors retailed in public houses, and provender for horses in public stables, from time to time, as they shall see fit; which prices shall be proclaimed by the cryer at the conclusion of their said respective sessions, and fixed upon the Court-house doors for public view.

Penalty on demanding higher prices.

II. And if any public ale-house-keeper, taverner, inn-holder, or public stable-keeper, exceed the prices so set by the justices, and be convict thereof, by oath or affirmation of one or more witnesses, before one or more justices of the peace of the respective counties of this province, or city of Philadelphia, every such offender shall, for the first offence, be fined in any sum not exceeding twenty shillings, and for the second offence forty shillings, and give security for their good behaviour; and for the third offence, upon conviction in the quarter sessions of the respective counties or city of Philadelphia, five pounds, and not to be recommended to keep a public house or tavern for the space of three years after such conviction.

Passed 31st May 1718.—Recorded A. vol. II. page 189.\*

\* For a reference to the various acts respecting taverns and tavern licences, see ante. chap. 172, and the notes there subjoined.

## CHAPTER CCXXXVI.

1718.

*An ACT for the advancement of justice, and more certain administration thereof. (u)*

**WHEREAS** King Charles the second, by his royal charter to William Penn, Esq. for erecting this country into a province, did declare it to be his will and pleasure, That the laws for regulating and governing of property within the said province, as well for the descent and enjoyment of lands as for the enjoyment and succession

(u) Though the greater part of this act has been repealed, altered, and supplied, it is necessary, for the sake of preserving the context, to include the whole in this republication, giving here a general view of the subject, and noting the specific variations under each section.

In an excellent essay on the criminal law of Pennsylvania, written by the late *William Bradford*, (who had been successively Attorney-General and a Judge of the Supreme Court of the state, and who died while in the office of Attorney-General of the United States,) an historical view of our penal code is introduced, in the course of which he remarks, that "by this act, (chap. 236,) which is the basis of our criminal law, the following offences were declared to be capital: High treason, (including all those treasons which respect the coin,) petit treason, murder, robbery, burglary, rape, sodomy, buggery, malicious maiming, manslaughter by stabbing, witchcraft and conjuration, arson, and every other felony, (except larceny,) on a second conviction. The statute of James I. respecting bastard children, was extended in all its rigour, and the courts were authorized to award execution forthwith. Arson is included, because such was the construction of the act at the time, and long after it; one Hunt was actually executed under it. But on a sounder construction, it being held to be a felony within clergy, this benefit was expressly taken away in 1767, (see post. chap. 557.) To this list, already too large, were added at subsequent periods, counterfeiting and uttering counterfeit bills of credit, (chap. 684, chap. 1505, sect. 5,) counterfeiting any current gold or silver coin; (see post. chap. 557, chap. 1766, sect. 5,) and the crime of arson was extended, so as to include the burning of certain public buildings, (see chap. 652.) All these crimes, except, *perhaps*, the impossible one of witchcraft, were capital at the revolution.

"We perceive by this detail, that the severity of our criminal laws is an exotic plant, and not the native growth of Pennsylvania. It has been endured, but, I believe, has never been a favourite."

In support of this opinion we find, that as soon as the revolution was effected, it was made an article of the constitution, that the penal laws, as heretofore used, shall be reformed by the Legislature of this state, as soon as may be, and punishments made in some cases less sanguinary, and in general more proportionate to the crimes: To which it was added, that "to deter more effectually from the commission of crimes, by continued visible punishment of long duration, and to make sanguinary punishments less necessary, houses ought to be provided for punishing, by hard labour, those who shall be convicted of crimes not capital"

The Legislature, in obedience to these instructions, proceeded in the year 1786, to ameliorate the penal code, and to introduce the punishment of hard labour.

1st. Thus, by the act of the 15th of September, 1786, (chap. 1231,) the crime against nature, robbery, and burglary, were punished by the forfeiture of real and personal estate, and imprisonment at hard labour, instead of death. The offenders, however, were only bailable before a Judge of the Supreme Court, and only triable in that Court, or in a court of Oyer and Terminer, or General Gaol Delivery, held in and for the county where the offence was committed. Peremptory challenges were allowed as heretofore; and it was declared that no attainder should work corruption of blood in any case, nor extend to the disinheritance or prejudice of any person or persons, other than the offender. The last of these provisions, with some enlargement of its objects, has since, indeed, been incorporated into the existing constitution, which declares, (art. 9, sect. 19,) that "no



1718. of goods and châtels, and likewise as to felonies, should be and continue the same, as they should be for the time being by the gene-

attainder shall work corruption of blood, nor, except during the life of the offender, forfeiture of estate to the commonwealth; that the estates of such persons as shall destroy their own lives shall descend or vest as in case of natural death; and if any person shall be killed by casualty, there shall be no forfeiture by reason thereof." The same act of the 15th of September, 1786, modified the punishment for horse-stealing, grand and petty larceny, and of accessories to those offences before the fact; and declared, generally, that "every person convicted of bigamy, or of being an accessory after the fact in any felony, or of receiving stolen goods, knowing them to be stolen, or of any other offence not capital, for which, by the laws now in force, burning in the hand, cutting off the ears, nailing the ear or ears to the pillory, placing in and upon the pillory, whipping, or imprisonment for life, is or may be inflicted, shall, instead of such parts of the punishment, be fined, and sentenced to hard labour for any term not exceeding two years: It enacted that the robbery or larceny of obligations or bonds, bills obligatory, bills of exchange, promissory notes for the payment of money, lottery tickets, paper bills of credit, certificates on loan, on the credit of this commonwealth, or of all or of any of the United States, shall be punished in the same manner as robbery or larceny of any goods or chattels. It declared, that the constrained presumption that the bastard child, whose death was privately endeavoured to be concealed by the mother, was therefore murdered by her, should not be sufficient evidence to convict the party indicted, without probable presumptive proof was given that the child was born alive: And it concluded, that "every felony, or misdemeanor, or other offence whatsoever, not specially provided for by this law, may and shall be punished as heretofore. "The malefactors punished under this act were to be employed in public as well as private labours; they were to be clad in a particular uniform; and in case of escape, or absenting without good cause, they were liable to be condemned to a servitude of two days for every one of absence: Provision was likewise made for the interior government of the prisons; for restoring the credit of such convicts as evinced a sincere reformation; for appropriating the profits of the labour of the convicts;

and for the removal of convicts from one county to another, for safe-keeping: It was declared, that any person convicted of a capital offence, committed before the act was passed, might, upon application, be sentenced under the new system; and the continuance of the act was limited to three years from the 1st of November, 1786.

2d. Respecting the preceding act, some additions and alterations were made on the 27th of March, 1789, (chap. 1398,) which related, principally, to the interior structure and regulation of the prisons; the appointment of inspectors, and other officers, to superintend and conduct the business of the prison of Philadelphia; and the assessment and raising monies to defray the expenses of the prison. It was, likewise, provided, that any felon escaping, should, on conviction thereof, suffer such additional confinement at hard labour, and such corporal punishment, as the court should direct; that if, after escaping, such felon should be guilty of any offence, which was capital before the act of the 15th of September, 1786, he should suffer death; that if a felon, after serving out the period of his sentence, or after being pardoned, in cases that were capital before the act of the 15th of September, 1786, shall be convicted of a second offence, that was also capital before that time, such person should suffer death, without benefit of clergy; and that if any keeper of the prison, or deputy, should suffer any spirituous liquors, (not allowed for the use of the sick,) to be introduced into the felons' prison, or suffer any communication between the men and women felons, or extort any perquisites, the offender should be liable to a fine of ten pounds.

3d. The continuance of the acts above referred to having nearly expired, by the limitation affixed to them, the Legislature embraced the opportunity of revising the system, and introducing such amendments as experience had suggested. Accordingly, the act of the 5th of April, 1790, (chap. 1505,) repealed the former laws, though it adopted and incorporated all the regulations, that are not effected by any provision specified in the following summary. The revised system provides for erecting cells, in order to confine therein the more hardened and atrocious offenders; for the commitment of any vagrant, or idle and disorderly



ral course of the law in the kingdom of England, until the said laws shall be altered by the said William Penn, his heirs or assigns, and 1718.

person, to be kept at hard labour in the gaol ; for the prevention of contagious disorders in the prison ; for the mode of feeding, clothing, and employing the convicts within the gaol, and not, as formerly, in public ; for furnishing materials to work, and keeping accounts thereof ; for the disposal of the profits of the labour of a convict, at the time of his discharge ; for excluding all visitors from the gaol, except the keeper and his deputies, the inspectors, officers and ministers of justice, counsellors or attornies at law, &c. for cleansing the prison, and exercising the prisoners ; for establishing an infirmary in the gaol ; for punishing assaults and other offences committed by the prisoners within the gaol ; for the appointment of a keeper, &c. of the prison ; for the appointment of the inspectors, and prescribing their powers and duties ; for converting the house of correction into " The Debtors' Apartment ;" for regulating the treatment of convicts in the counties ; for proceeding against the keepers of prisons, on charges of partiality and cruelty ; for furnishing the county commissioners with kalendars of the prisoners ; for punishing the keepers of prisons, in cases of involuntary escapes ; for the punishment of convicts for an escape, and also for committing offences, after an escape or pardon, in the same manner as the previous laws prescribed ; for removing felons from the counties to the gaol of Philadelphia ; and for imposing a penalty on selling liquors in the gaol. The continuance of this act was limited to five years from the 5th of April, 1790, and thence to the end of the next session of the General Assembly.

4th. In prosecuting this reformation of our penal code, another act was passed on the 23d of September, 1791, (chap. 1572,) by which the process of outlawry was regulated ; the act in the text, (sect. 11,) so far as it extends the statute of 1st James I. ch. 12, respecting conjuration, &c. was repealed ; the proceedings, in case any prisoner should stand mute, or exceed the lawful number of peremptory challenges, are prescribed : It is enacted, that the reputed fathers of bastards, begotten in one county, and born in another, or begotten in another state, and born here, shall be prosecuted in the county where the children are born ; that the punishment for adultery shall be changed to fine and imprisonment ; that in all capital

felonies, robbery and burglary, the accessories may be prosecuted and punished, though the principal is not taken ; that restitution of stolen goods shall be made to the owner, before any forfeiture shall accrue to the state, and process may issue therefor, agreeably to the 30th section of the act in the text ; that goods, suspected to be stolen, may be taken into a Magistrate's custody, with proceedings thereupon ; that costs on bills returned *ignoramus*, shall be paid by the county ; that persons confined for the costs of prosecution shall have the benefit of the insolvent laws ; that costs on unfounded charges shall be paid by the county ; that the expenses of removal for trial from one county to another, shall be defrayed by the latter, but if from another state to this, shall in part be defrayed by the state ; and that the costs of prosecution, in cases of conviction, shall be paid by the proper county, not exceeding one conviction against the same person at the same sessions. The act concludes, by an alteration respecting the appointment of the inspectors and keeper of the prison of Philadelphia ; and by repealing all former laws, so far as they come within its purview.

5th. The plan for rendering punishments less sanguinary having thus undergone an experiment of eight years, and the efficacy, as well as the humanity, of the policy in which it originated, being ascertained, the Legislature proceeded to consummate their great and exemplary work. By an act of the 22d of April, 1794, (chap. 1766,) it is declared, that " no crime whatsoever, hereafter committed, (except murder of the first degree,) shall be punished with death." The act then proceeds to define murder of the first and second degree, and the mode of ascertaining the offence, on verdict or confession ; it abolishes all legal distinction between petit-treason and other kinds of murder ; it prescribes the punishment in cases of murder of the first and second degree, high-treason, arson, rapé, counterfeiting, and knowingly uttering counterfeit gold or silver coin ; forging, or knowingly uttering forged bank notes ; mayhem ; voluntary or involuntary manslaughter ; concealing the death of a bastard ; committing a second offence, capital before the 15th of September, 1786, or committing such offence after an escape or pardon ; it abolishes the claim of benefit of clergy, or of the act



1718. by the freemen of the said province, their delegates or deputies, or the greater part of them : And whereas it is a settled point, that

in the text, and prescribes the punishment for offences heretofore clergyable ; it provides for the removal and reporting the cases of all convicts for offences (except for murder of the first degree) from the several counties to the gaol of Philadelphia, and for the treatment of all convicts there confined ; it allows to persons committing crimes before the passing of the act a commutation of the punishment ; and to all persons indicted, the same number of peremptory challenges heretofore allowed, and a trial in the Supreme Court, or Court of Oyer and Terminer, in the county where the fact was committed : It enacts, that in case the Grand Jury shall in the same indictment charge a woman with concealing the death of her bastard child and with murder, the petty Jury may either convict her of both offences, or convict her of one, and acquit her of the other ; but that the concealment of the death of any such child shall not be conclusive evidence to convict the party indicted of murder, unless the circumstances attending it shall satisfy the jury, that she did wilfully and maliciously destroy and take away the life of such child.

6th. As the fundamental law of the penal code would have expired, by its own limitation, at the end of the session succeeding the 5th of April, 1795, it was extended for the term of three years, by an act passed on the 18th of April, 1795, chap. 1850. This act, likewise, declared that the inspectors of the gaol should be empowered to provide necessaries for all prisoners, to form them into classes, and to clothe and employ them. The authority previously given to punish convicts by whipping or close confinement is rescinded ; and confinement in a cell, on bread and water, substituted. The power to appoint and remove the keeper of the gaol, to fix his salary, and to approve the appointment of his deputies, is vested in the inspectors ; and the allowance of five per cent. on the manufactures of the convicts, formerly granted to the keeper, is withdrawn.

Having thus historically traced the progress of improvement in our penal code, it is thought proper to subjoin a sketch of miscellaneous matters, connected with that system : referring, for particulars, to the notes affixed to the several sections of the act in the text, and the index to the several volumes of this edition.

Of binding to the peace, see ante.

chap. 26. Of barrators, see ante. chap. 41, and post. chap. 1012. Of cursing and swearing, see ante. chap. 44, post. chap. 369, 1237, 1747. Of Sabbath-breaking, see ante. chap. 119, post. chap. 369, 822, 1236, 1747. Of incest, see chapters 119, 121, 1683. Of adultery and fornication, see chap. 122, 662, 1176, 1572. Of bigamy, see chap. 123, 1505, 1176. Of riots, see ante. chap. 128. Of bailing prisoners, see ante. chapters 151, 153, post. chap. 610, 1121, 1505, 1564. Of the recovery of fines and forfeitures, see ante. chap. 139, post. chap. 255, 879, 888, 971. Of the trials of petty larceny, see ante. chap. 107, post. chap. 243, 1505. Of importing from other countries impotent persons and convicts, post. chap. 314, and the acts there cited, and chap. 1403. Of lotteries, see post. chap. 478, 1592. Of horse stealing, see post. chap. 557, 879, 908, 1505. Of breaking knockers and spouts or taking down signs, see post. chap. 652. Of counterfeiting the paper money of this and other colonies or states, see chapters 684, 727, and the several acts issuing the same. Of high treason, see chapters 729, 878, 989, 1157, 1766. Of treasons, piracies and felonies committed on the high seas, see chapters 876, 904, and the notes there subjoined. Of robbery, see chap. 878, 1505. Of manslaughter, see chap. 878, 1766. Of the restitution of stolen goods, see chap. 1250, 1485, 1572. Of transporting or forcibly carrying negro or mulatto slaves, out of the state, and employing vessels in the slave trade, see chap. 1334. Of the removal of indictments, see post. chap. 249, and the notes there subjoined. Of wilfully firing woods, &c. see post. chap. 338, 1732. Of intrusion on lands, see chapters 11, 81, 1815.

For the institution, jurisdiction, and process of the various courts of justice established in this state, see post. chap. 255, and the notes there subjoined. For the punishment of the offences included in the law for suppressing vice and immorality (to wit, Sabbath-breaking, cursing and swearing, drunkenness, gambling, keeping billiard and EO tables, and duelling) (see chap. 1747.) For the law respecting juries, see chap. 1127.

An indictment will lie in Pennsylvania, for maliciously, wilfully, and wickedly killing a horse. 1 Dallas, 335. The poisoning of chickens ; cheating with false dice ; fraudulently tearing a promissory note ; and many other offences of a similar description, have also



as the common law is the birth-right of English subjects so it ought 1718.  
to be their rule in British dominions; but acts of parliament have

been indicted here. *Ibid.* (Note to former edition.)

For the reasons given by the former editor, the whole of this act, together with his valuable and comprehensive notes, are retained entire. To the acts reforming the penal laws (post.) the notes are differently arranged; and every public crime or offence, with its consequent punishment, and all collateral matters relating to it, are distinctly exhibited, and brought into one general view, so as to form a complete digest of the criminal law. It is therefore only necessary to add here, that since the foregoing note was drawn out, the following acts have been passed.

An act for perpetuating the penal laws of the state. April 4th, 1799, (post. chap. 2040.)

The 20th, 22d, 23d and 24th sections of the act to regulate the general elections, passed Feb'y 15th, 1799, (post. chap. 2019,) provides for the punishment of perjury in elections, and the forging, altering or embezzling election certificates, tickets, &c. and the frauds of election officers.

The act of April 10th, 1799, (post. chap. 2060,) provides, that the judges of the Supreme Court, or any two of them, may direct the sheriff of *Philadelphia* to remove from any pestilential danger, the prisoners who may be confined in the gaol of the said city and county, to such place of safety, as they may think proper; provided that nothing therein contained shall authorize the removal of any prisoners, confined by virtue of criminal process, without an application for that purpose from a majority of the inspectors of the gaol of the city and county of *Philadelphia*.

By an act passed Feb'y 12th, 1802, (post. chap. 2221,) it is made penal for any person to exercise any office or appointment, the exercise of which is by the said act declared to be incompatible with the holding or exercising any office or appointment under the United States.

By an act passed March 29th, 1802, (post. chap. 2264,) a penalty is inflicted on the superintendent or keeper of the gunpowder magazine, in the city and neighbourhood of *Philadelphia*, or his deputy, &c. for being concerned, directly, or indirectly in manufacturing, buying or selling gunpowder, in gross, or by retail.

The 13th section of the general road act, passed April 6th, 1802, makes it penal for any person working on the

highway, asking or extorting money, &c. from travellers, (post. chap. 2287,) and the 15th section of the same act fixes a penalty for committing nuisances on the highways.

March 2d, 1805, (post. chap. 2537) an act passed for the more effectual prevention of excessive and deceitful gaming, and to prevent unlawful sales of chances of lottery tickets, and to prevent insuring for or against the drawing of such tickets.

Indictments to be directed by the Court against persons obstructing the navigation, or impeding the passage of fish by mill dams, &c. in navigable streams declared public highways, March 23d, 1803, (post. chap. 2342.)

Costs on ignoramus bills, and acquittals by *petit* jury, regulated, and the power of grand and petit juries to decide by whom they shall be paid, and how to be enforced.

Where there are several defendants in an indictment, the costs shall be taxed as if there was only one defendant.

All persons concerned in the same offence to be included in the same indictment. Acts of December 7th, 1804, and March 28th, 1805, (post. chap. 2513, 2571,) made perpetual by an act passed March 29th, 1809.

A new prison, or house of employment to be erected in the city of *Philadelphia*, with the proceeds of the sales of the public unimproved lots therein, for the purpose of more completely carrying into effect the penal laws of the state, and a right reserved to the several counties, to send their convicts to the present prison of the city and county of *Philadelphia*. Act of April 2d, 1803, (post. chap. 2577.)

Penalty for counterfeiting the notes of the bank of *Philadelphia*, March 5th, 1804, (post. chap. 2439, sect. 7.)

Penalty for perjury and subornation of perjury, April 3d, 1804, (post. chap. 2510.)

Penalty on sheriff failing to give a bill of particulars of his fees and a receipt on payment, whether demanded or not, and for omitting to fix up in his office the 9th section of the act of March 28th, 1803.—Sect. 10 of that act, (post. chap. 2355.)

By an act passed March 26th, 1806, (post. chap. 2687,) persons convicted of felony or larceny, and sentenced to undergo an imprisonment at hard labour for any term not exceeding three years the Court, in their discretion, may direct the imprisonment, &c. to be in the



1718. been adjudged not to extend to these plantations, unless they are particularly named in such acts: Now forasmuch as some persons

county, or in the gaol and penitentiary of Philadelphia. In all cases of larceny, or, where by law a fixed or specific fine is affixed to the commission of any crime, the Court, in its discretion, may in lieu thereof, assess such fine, as they may judge right, not exceeding the fine heretofore affixed by law.

Persons wilfully setting fire to any barn, stable, outhouse, or to any barrack, rick, or stack of hay, grain, or bark, &c. or being accessory, &c. shall suffer imprisonment, &c. in the penitentiary of Philadelphia for any term not less than five, nor more than twelve years, and pay a fine not exceeding \$2000, at the discretion of the Court.

The Presidents of the Courts of Common Pleas may admit to bail, persons accused of robbery, burglary, sodomy, or buggery, as fully as the judges of the Supreme Court.

By a further supplement to the penal laws, passed April 4th, 1807, (post. chap. 2805,) instead of two years imprisonment limited by the 4th section of the act to reform the penal laws, the Court may extend the confinement to a term not exceeding seven years in their discretion, except in cases of bigamy, or of being accessory after the fact in any felony, or receiving of stolen goods, knowing them to be stolen: And persons convicted of any of the offences alluded to in the foregoing section for which he or she shall be sentenced to hard labour, for the space of two years or upwards, may, at the discretion of the Court, within three months after conviction, be removed to the penitentiary of Philadelphia for the residue of the time.

Persons charged with felony, and escaping, may be apprehended by the warrant of the President of the district where they may be found, directed to the Sheriff of the county where found, and shall be by him conducted to the proper county, or city, where the felony is alledged to have been committed, at the expense of the latter.

Section 4th, inflicts a penalty on gaolers refusing or neglecting to furnish the commissioners with lists of prisoners committed; and on the commissioners for neglecting or refusing to procure sufficient articles and materials of labour and manufacture, or otherwise neglecting the duties enjoined upon them by the 30th section of the act to reform the penal laws. And where the gaol of any county is insufficient, additional buildings shall be erected with the consent and approbation of the

Court and Grand Jury of the proper county.

Section 5th, inflicts a penalty on gaolers selling or suffering spirituous liquors, to be sold or delivered to prisoners, except in cases of sickness, and by section 8th, the 35th section of the act to reform the penal laws, is repealed.

And by section 6th, gaolers negligently suffering prisoners to escape, shall forfeit and pay for every such offence, a sum not exceeding three hundred dollars, and all the penalties of this act are to be recovered, on conviction in the Quarter Sessions of the proper county, by indictment or information.

By an act passed Feb'y 15th, 1808, (post. chap. 2903,) masquerades and masqued balls are declared to be common nuisances; and those who promote or encourage them shall be punished, &c.

By an act passed March 28th, 1808, (post. chap. 2984) no person arraigned on an indictment, who has been admitted to bail, &c. shall be put within the prisoner's bar to plead, or during the trial.

February 23d, 1809, an act passed, giving additional powers to, and changing the mode of appointment of the inspectors of the prison of Philadelphia.

By the act of April 4th, 1809, in all criminal prosecutions, wherein peremptory challenges have not heretofore been allowed, the defendant shall be allowed to challenge four jurors peremptorily.

By the 9th section of the act of March 11th, 1809, persons charged with any criminal offence in the Mayor's Court, may have the cause removed to the Court of Quarter Sessions of the county of Philadelphia at the first sessions of the Mayor's Court, in which the bill is found.

January 30th, 1810, The robbery or larceny of any bank note or notes of any incorporated bank, shall be punishable in the same manner as robbery or larceny of any goods or chattels of equal amount.

An act passed March 19th, 1810, inflicts a penalty on individuals, not incorporated, associating for the purpose of banking.

The act concerning foreign insurance companies, passed March 10th, 1810, makes such insurances penal, on the agents and the insured, and makes the policy void.

See the act concerning libels, passed March 16th, 1809, and the act concerning contempts of Court, passed April 3d, 1809, both of limited duration.



have been encouraged to transgress certain statutes against capital crimes, and other enormities, because those statutes have not been hitherto fully extended to this province: 1718.

I. Therefore, lest there should be any further failure in that behalf, *Be it enacted*, That all inquests and trials of high treason shall be according to the due order and course of the common law, observing the directions of the statute laws of Great-Britain, relating to the trials, proceedings and judgments, in such cases. (x)

Trials of high treason to be as in England.

II. *And be it further enacted*, That the enquiries and trials of all petty treasons; misprision of treason, murder, manslaughter, and homicides, and all such other crimes and misprisings, as by this act, or any other act of assembly of this province are or shall be made capital or felonies of death, which have been or shall be done, committed, perpetrated or happen, within this province, shall be as by this act is directed.

Trials of other capital crimes, as by this act.

III. And whereas the several crimes declared by this act to be felonies of death are, by the course of the laws of that part of Great-Britain, called England, to be enquired of and tried by justices, juries and witnesses, upon their oaths: But forasmuch, as the greatest part of the inhabitants of this province are such, who, for conscience sake, cannot take an oath in any case, yet without their assistance justice cannot be well administered, and too great a burthen will fall upon the other inhabitants: *Be it therefore enacted*, That all and all manner of crimes and offences, matters and causes whatsoever, to be enquired of, heard, tried and determined, by virtue of this or any other act or law of this province, or otherwise, shall and may be enquired of, heard, tried and determined by judges, justices, inquests and witnesses, qualifying themselves according to their conscientious persuasion respectively, either by taking a corporal oath, or by the solemn affirmation allowed by act of Parliament to those called Quakers in Great-Britain; which affirmation of such persons as conscientiously refuse to take an oath, shall be accounted and deemed in the law to have the full effect of an oath, in any case whatsoever in this province. And that all such persons as shall be convicted of falsely and corruptly affirming or declaring any matter or thing, which, if the same had been upon oath, would by

Qualifications of judges, juries and witnesses.

Their affirmation to have the effect of an oath. If false to be perjury.

(x) By chap. 726, so much of the common law, and such of the statute laws of England, as had been antecedently in force, are adopted and confirmed, with an exception (among other things) of so much of the statute laws of England aforesaid relating to felonies, as takes notice of or relates to treason, or directs the style of process in any case whatsoever. "It has been decided in our Courts that no act of Parliament made in England *previously* to the settlement of the province of Pennsylvania was extended here, unless by acts of assembly, adjudications of Courts, or established usage; that all statutes made *since* the settlement of the province have no force here, unless the colonies were particularly named; and that the common law of England had

always been in force in Pennsylvania." 1 Dallas, 67, 74, 75. For the definition of treason and misprision of treason in Pennsylvania, see chap. 729, 989, 1157, and the notes there respectively subjoined. By an act of the 8th of March, 1780 (chap. 888) it was provided, that persons charged with treason might be proceeded against for a misdemeanor, on the evidence of one witness. The same act declared, that no attainder of treason; to be had after the then existing war, should extend to the disinheriting any heir, nor to the prejudice of any person, other than the offender; the act of the 5th day of April, 1790, (chap. 1505,) adopted the same liberal policy; and our present constitution, (art. 9, sect. 19,) has confirmed it.



1718. law amount to wilful and corrupt perjury, shall incur the same penalties, disabilities and forfeitures, as persons convicted of wilful perjury do incur by the laws of Great-Britain. (*y*)

Privileges of  
criminals.

IV. And that upon all trials of the said capital crimes, lawful challenges shall be allowed, and learned counsel assigned to the prisoners, and shall have process to compel witnesses to appear for them upon any of the said trials. But before such witnesses shall be admitted to depose, or give any manner of evidence, they shall first take an oath or affirmation, *To say the truth, the whole truth, and nothing but the truth*, in such manner as the witnesses for the King are by the law of this province obliged to do: and if convicted of any wilful perjury in such evidence, shall suffer all the punishments, penalties, forfeitures and disabilities; which by any of the laws and statutes of Great-Britain are or may be inflicted upon persons convicted of wilful perjury. (*z*)

Persons  
standing  
mute, &c. to  
suffer as fel-  
ons convict,  
&c.

[V. But if any of the said prisoners shall, upon their arraignment for any of the said crimes, stand mute, or not answer directly, or shall peremptorily challenge above the number of twenty persons returned to serve of the jury, he or they so offending shall suffer as a felon convict, and shall lose the benefit of clergy, and of this act, in the same manner as he or they should have done, if they had been indicted, arraigned, and found guilty, if it appear to the Justices, before whom such felons be arraigned, by evidence given before them, or by examination, that the same felonies whereon they are so arraigned, had been such felonies, by reason whereof they should have lost the benefit of their clergy.] (*a*)

Judgments  
and execu-  
tions of such  
criminals to  
be as in Eng-  
land.

[VI. And when any person or persons shall be so as aforesaid convicted or attainted of any of the said crimes, they shall suffer as the laws of Great-Britain now do, or hereafter shall, direct and require in such cases respectively. And it shall and may be lawful

(*y*) Mr. Bradford states in the essay, to which the introductory note refers, that the privilege acquired by this section was the inducement for adopting the sanguinary rigour of the English penal law, in violation of the humane policy, which had previously influenced the legislature of Pennsylvania, on the subject of crimes and punishments.—See the law concerning liberty of conscience, (ante chap. 115.—) By an act of the 9th of May, 1724, (post. chap. 281) the forms of affirmations to be taken by Quakers on various occasions were prescribed. By an act of the 3d February, 1742-3, (post. chap. 359,) the dispensation substituting an affirmation for the oath in the usual form, was extended to the case of other protestants, not being Quakers. By an act of the 21st of March, 1772, (chap. 660,) the privilege of making, in all cases, a solemn attestation, according to the conscientious persuasion of the party, either by affirmation, the usual oath, or with uplifted hand, was recognized and established.

[For the history of this act, see votes of assembly, vol. 2d. It finally passed under the administration of Sir William Keith.]

(*z*) The same privileges were expressly continued to all persons charged with the commission of crimes by the successive constitutions of the state: and the acts for reforming our penal law. See the constitution of 1776, chap. 1. sect. 9. The constitution of 1790, art. 9, sect. 11. And chap. 1505, 1766.

(*a*) By the existing law, (chap. 1572, sect. 5.) it is provided, that if a prisoner stands mute, does not answer directly, or shall peremptorily challenge more than the legal number of jurors, the plea of not guilty shall be entered on the record, the supernumerary challenges shall be disregarded, and the trial shall proceed, as if the prisoner had regularly pleaded. See, likewise, chap. 1505, and 1766, where it is repeatedly declared, that peremptory challenges shall be allowed in all such cases, wherein they have heretofore been allowed by law.

for the Justices of the Court, where any of the said attainders or convictions shall happen, to give and pronounce such judgment or sentence against the persons so attainted or convicted, as their crimes respectively require, according to the manner, form and direction, of the laws of that part of Great-Britain called England, in the like cases, and thereupon to award and order execution to be done accordingly.] (b)

VII. *And be it further enacted*, That if any person or persons shall commit sodomy or buggery, or rape or robbery, which robbery is done by assaulting another on or near the highway, putting him in fear, and taking from his person money or other goods, to any value whatsoever, he or they so offending, or committing any of the said crimes within this province, their counsellors, aiders, comforters, and abettors, being convicted thereof as abovesaid, shall suffer as felons, according to the tenor, direction, form and effect of the several statutes, in such cases respectively made and provided in Great-Britain, any act or law of this province to the contrary in any wise notwithstanding. (c)

VIII. *And be it further enacted*, That if any woman shall be delivered of any issue of her body, male or female, which being born alive, should, by law, be deemed a bastard, and that she endeavour privately, either by drowning or secret burying thereof, or any other way, either by herself, or the procuring of others, so to conceal the death thereof, as that it may not come to light whether it were born alive or not, but be concealed, in every such case, the mother so offending, being convicted thereof according to the usual course of proceedings in capital crimes within this province, shall suffer death, as in case of murder; except such mother can make proof, by one witness at the least, that the child, whose death was by her so intended to be concealed, was born dead.] And if any person or persons shall counsel, advise or direct such woman to kill the child she goes with, and after she is delivered of such child, she kills it, every such person, so advising or directing, shall be deemed accessory to such murder, and shall have the same punishment as the principal shall have. (d)

1718.

Sodomy, &c.  
how punished.Murder in  
women con-  
cerning the  
death of  
their bas-  
tards, how  
punished.Advising to  
kill them, is  
murder.

(b) This section is either expressly or virtually repealed, in the course of the laws founded on the revolution, or enacted for the reform of our penal code. See the introductory note.

(c) The crimes specified in this section have been subjected to the punishment of imprisonment at hard labour, by the successive acts for reforming our penal law. See chap. 1505, 1766.—Previously, however, by an act of the 8th of March, 1780, (chap. 878,) the locality contained in the above definition of robbery, was enlarged, and the crime made capital, “whether the same be committed on or near the highway or elsewhere, in any place or places whatsoever, within this commonwealth.” By the act of the 22d of April, 1794, (chap. 1766,) murder com-

mitted in perpetrating or attempting to perpetrate robbery, or rape, is declared to be of the first degree.

(d) The law relating to the crime described in this section has undergone the following alterations: In the successive acts of the 15th September, 1786, and the 5th March, 1790, (chap. 1505,) it was recited, that by the law in the text, “the bare concealment of the death is made almost conclusive evidence of the child’s being murdered by the mother, or by her procurement;” and both laws enacted, “that the constrained presumption, that the child, whose death is so concealed, was, therefore, murdered by the mother, shall not be sufficient evidence to convict the party indicted, without probable presumptive proof is given, that the child



1718.

The statute  
against stab-  
bing extend-  
ed.

IX. *And be it further enacted*, That the statute against stabbing, made in the first year of the reign of King James the first, (chap. 8.) entitled, *An act to take away the benefit of the clergy for some kind of manslaughter*, shall be duly observed and put in execution in this province, and be of like force and effect, as if the same act were here repeated and enacted; but that all such persons as shall happen to be present and aiding to the stabbing of another, which by the said act is made murder, shall not be deemed principals, but accessories, to such stabbing.] (e)

Persons con-  
victed of put-  
ting out an  
eye, &c.  
shall suffer  
as felons.

[X. *And be it further enacted*, That if any person or persons, on purpose, and of malice forethought, and by laying in wait, shall unlawfully cut out or disable the tongue, put out an eye, slit the nose, cut off the nose, or lip, or cut off or disable any limbs or members of any of the King's subjects, with intention in so doing, to maim or disfigure, in any of the manners before mentioned, such his majesty's subjects, that then, and in every such case, the person or persons so offending, their counsellors, aiders, and abettors, knowing of and privy to the offence as aforesaid, shall suffer death, as in cases of felony, without benefit of clergy.] (f)

Witchcraft,  
&c.

[XI. *And be it further enacted*, That another statute, made in the first year of the reign of King James the first, (chap. 12,) entitled *An act against conjuration, witchcraft, and dealing with evil and wicked spirits*, shall be duly put in execution in this province, and of like force and effect, as if the same were here repeated and enacted.] (g)

was born alive." The act of the 22d April, 1794, (chap. 1766,) in different terms, however, declares, that "the concealment of the death of any such child shall not be conclusive evidence to convict the party indicted of the murder of her child, unless the circumstances attending it be such as shall satisfy the mind of the jury, that she did wilfully and maliciously destroy and take away the life of such child." And it renders the bare concealment of the death of the child, under the circumstances stated in the text, an offence punishable by imprisonment at hard labour; providing, that "if the Grand Jury shall in the same indictment charge any woman with the murder of her bastard child, as well as with the offence of concealing its death, the jury, by whom such woman shall be tried, may either acquit or convict her of both offences, or find her guilty of one, and acquit her of the other, as the case may be."

(e) By the act of the 22d of April, 1794, (chap. 1766,) it is enacted, that no crime whatsoever shall be punished with death, except murder of the first degree, which is defined to be, "all murder which shall be perpetrated by means of poison, or by lying in wait, or by any other kind of wilful, deliberate

and premeditated killing, or which shall be committed in the perpetration, or attempt to perpetrate any arson, rape, robbery or burglary." All other kinds of murder are declared to be of the second degree, punishable by imprisonment at hard labour. The 7th section of the same act inflicts the same species of punishment on voluntary manslaughter, enlarging its duration for the second offence; and in cases of involuntary manslaughter, happening in consequence of an unlawful act, the felony may be waved, and the party prosecuted for a misdemeanor; or both offences may be charged in the same indictment, and the party be acquitted of the one, and found guilty of the other.

(f) The sixth section of the act of the 22d of April, 1794, (chap. 1766,) supersedes and supplies the section in the text; enlarging, at the same time, the description of the offence, so as to include in the punishment, (which is imprisonment at hard labour, and a fine not exceeding one thousand dollars, three-fourths whereof to the use of the party grieved,) all persons who shall cut off an ear, or shall maliciously, and of purpose, pull or put out an eye, while fighting, or otherwise.

(g) The British act of Parliament was repealed in England by the statute



**XII.** *And be it further enacted,* That if any person or persons shall be so as aforesaid convict of burglary, which is a breaking and entering into a dwelling-house of another in the night-time, with an intent to kill some reasonable creature, or to commit some other felony within the same house, whether the felonious intent be executed or not, he or they so offending, within this province, being convicted thereof as aforesaid, shall suffer death, without benefit of clergy, any law of this province to the contrary notwithstanding. (*h*)

1718.  
Burglary  
how punish-  
ed.

**[XIII.** *And if any person or persons shall be so as aforesaid convicted of maliciously and voluntarily burning the dwelling-house, barn, stable or out-house, of another, having corn or hay therein, he or they so offending, within this province, shall suffer death, any law of this province to the contrary notwithstanding.]* (*i*)

Arson how  
punished.

**[XIV.** *And be it further enacted,* That if any principal offender in any capital crime, which by the laws of this province for the time being is made felony of death, shall be convicted of any such felony, or shall stand mute, or peremptorily challenge above the number of twenty persons returned to serve of the jury, it shall and may be lawful to proceed against any accessory, either before or after the fact, in the same manner as if such principal felon had been attainted thereof, notwithstanding any such principal felon shall be admitted to the benefit of his clergy, pardoned, or otherwise delivered before attainder : and every such accessory shall suffer the same punishment, if he or she be convicted, or stand mute, or peremptorily challenge above the number of twenty persons returned to serve of the jury, as he or she should have suffered, if the principal had been attainted.] (*k*)

Accessaries-

of 9th Geo. II. chap. 5; but it continued in force in Pennsylvania till the 23d of September, 1794. See chap. 1572, sect. 4.

(*h*) By an act of the 21st of March, 1772, (chap. 652,) it is declared, that if any person shall break and enter the State-house, or any of the adjoining offices or buildings, or any church, meeting-house, or other building for public worship, or any academy or school-house, or library belonging to any body politic or corporate, in the night-time, with intent to commit a felony within the same, whether the felonious intent be executed or not, the offender should be sentenced to the pillory, corporal punishment, and imprisonment; but the sentence is changed to confinement at hard labour, by virtue of the general provision in the 4th section of the act of the 5th of April, 1790, (chap. 1505.)—The present punishment of burglary is confinement at hard labour, (chap. 1505,) but by the act of the 22d of April, 1794, (chap. 1766,) it is declared, that murder committed in the perpetration, or attempt to perpetrate burglary, &c. shall be deemed of the first degree, punishable with death.

(*i*) By an act of the 21st of Februa-

ry, 1767, (post. chap. 557,) it is declared, that “if any person shall maliciously and voluntarily burn the dwelling-house, or any other house, barn, or stable, adjoining thereto, or any barn or out-house, having corn or hay therein, although the same shall not be adjoining to such dwelling-house, belonging to any other,” the offender shall suffer death. By an act of the 21st of March, 1772, (chap. 652,) it is declared, that “if any person shall maliciously and voluntarily burn the State-house, or any of the adjoining offices or buildings, or any church, meeting-house, or other building for public worship, or any academy or school-house, or library, belonging to any body politic or corporate,” the offender shall suffer death. The punishment of arson, or of being accessory thereto, has been commuted, however, into confinement at hard labour, by the 4th section of the act of the 22d of April, 1794, (chap. 1766.)

(*k*) For the law respecting the punishment of accessaries before the fact, see the acts that relate to the various principal offences; particularly chap. 1505, and 1766, and the note to the next section.



1718.

Concealers  
of robbers.

Though the  
principal fe-  
lon is not ta-  
ken, accessa-  
ries may be  
prosecuted.

Proceedings  
to outlawry  
on indict-  
ments.

**XV.** *And be it further enacted,* That if any person or persons shall receive, harbour or conceal, any of the said robbers or burglars, felons or thieves, or shall receive or buy any goods or chattels, that shall be feloniously taken or stolen by any such robbers or burglars, felons or thieves, knowing the same to be stolen, and being so as aforesaid convicted of either of the said offences, if he or they pray to have the benefit of this act, in lieu of clergy, judgment of death shall not be given against them upon such conviction, nor execution awarded upon any outlawry for such offence, but they shall be burnt in their hands, in manner as herein after directed. (1)

**XVI.** *Provided always,* That if any such principal robber or burglar, felon or thief, cannot be taken, so as to be prosecuted and convicted for any such offence, nevertheless it shall be lawful to prosecute and punish every such person and persons, buying or receiving any goods stolen by any such principal felon, knowing the same to be stolen, as for a misdemeanor, to be punished by fine and imprisonment, or other such corporal punishment, as the court shall think fit to inflict, although the principal felon be not before convict of the said felony : Which punishment shall exempt the offender from being punished as accessory, if such principal felon shall afterwards be taken and convicted.] (m)

**XVII.** *And be it further enacted,* That if any person or persons, who have been indicted or appealed, or hereafter shall be indicted or appealed, for any of the said crimes, did not, or will not, appear to answer such indictment or appeal, the Justices before whom the same hath been or shall be taken, shall award a writ, called *capias*, against every such offender, directed to the Sheriff of the county where the party indicted or appealed are, by such indictment or appeal, supposed to be conversant or inhabit, returnable before the Justices of that court, where such party is or shall be so indicted or appealed, at the Supreme or Provincial Court next after the taking of such indictment or appeal ; by which writ of *capias*, the same Sheriff shall be commanded to take the body of him or them so indicted or appealed, if he or they can be found in his Bailiwick. And if he or they cannot be found, the Sheriff shall make a proclamation in every Court of Quarter Sessions which shall be held for the said county, where the said party so indicted or appealed, is supposed to inhabit or be conversant as aforesaid, *That he or they being so in-*

(1) By the 4th section of the act of the 5th of April, 1790, (chap. 1505,) it is enacted, that every person convicted of being an accessory after the fact, or of receiving stolen goods, knowing them to have been stolen, or of any other offence not capital, for which, before the 15th of September, 1786, burning in the hand, &c. might be inflicted, should be sentenced, instead thereof, to imprisonment at hard labour. By the 9th section of the act of the 22d of April, 1794, (chap. 1766,) the claim to the benefit of clergy, or to the benefit of the act in the text, is abolished. For the proceedings to restore stolen goods to

the owners, or to seize goods suspected to be stolen, see the act of the 23d of September, 1791, (chap. 1572, section 9, 10.)

(m) By the 8th section of the act of the 23d of September, 1791, (chap. 1572,) it is likewise declared, that in all cases of felony of death, robbery and burglary, it shall be lawful to punish the receivers of such felons, &c. by fine and imprisonment, though the principals cannot be taken ; and that a conviction, in such cases, shall exempt the party from being prosecuted as accessory after the fact, if the principal felon should be taken.



*dicted or appealed, shall appear before the said Justices, at the said Supreme Court, on the day of the return of the said writ of *capias*, to answer our lord the king, or to the party, of the treason, felony or trespass, whereof he or they are so indicted or appealed; which writ shall be delivered to the said Sheriff or Sheriffs three months before the return thereof; after which writ of *capias*, so served and returned, if he who is so indicted or appealed comes not at the said day of return of the said *capias*, and yield his body to the Sheriff, he shall be, by the Justices of the said Supreme Court, pronounced out-lawed, and attainted of the crime whereof he is so indicted or appealed as aforesaid: and from that time shall forfeit and lose all his lands and tenements, goods and chattels: Which forfeiture, and all other forfeitures expressed or implied by the said judgments, to be given upon the said capital offences mentioned in this act, after such criminal's just debts and reasonable charges of their maintenance in prison are deducted, shall go, one half to the Governor for the time being, towards support of this government, and for defraying the charges of prosecution, trial and execution, of such criminals; and the other half or residue thereof shall go to such criminal's wife and children equally; but if he leaves no wife or children, then to the next of his kindred, not descending lower than the second degree, to be claimed within three years after the death of such criminals; otherwise the same shall go to the Governor as aforesaid, any law or usage to the contrary notwithstanding.] (n)*

1718.

Persons outlawed how punished.

**XVIII.** *Provided always, and be it further enacted, That where any person or persons charged, committed to prison, or convicted of any of the said capital crimes, being justly indebted to any other person or persons, he or they so indebted may be arrested, or their goods and chattels attached, to answer the suits of their respective creditors, who, making due proof that the debts or sums demanded are really and without fraud due, shall recover judgment for the same, and executions may be awarded against the lands, goods and chattels, of such defendants, as is usual in other cases. Provided also, That he or they, who shall happen to break prison, shall not have judgment of life or member for breaking of prison only, except the cause for which he or they were taken and imprisoned did require such judgment, had he been convict according to law. (o)*

Criminals liable to be arrested by their creditors.

Breakers of prisons.

**[XIX.** *And be it further enacted, That if any person be convicted of any such felony as is hereby made capital, for which he ought by the laws of Great-Britain to have the benefit of his clergy, and shall pray to have the benefit of this act, he shall not be required to read, but without any reading shall be allowed, taken and reputed to be, and punished as a clerk convict, and burnt, if for murder, with an (M) upon the brawn of the left thumb; and if for any other felony, with a (T) in the same place of the thumb; which marks are to be made by the Gaoler in open Court, as is usual in Great-Britain; which shall be effectual to all intents and purposes,*

Benefit of clergy how obtained.

(n) The whole of this section is superseded and supplied by the act of the 23d of September, 1791, (chap. 1572.)

of outlawry under this act, see 1 Dallas, 86. *Respublica v. Doan*.

(o) For the punishment on breach of prison, and escapes, see chap. 1505, and 1766.

For an elaborate opinion on a process



1718.

The Justices shall commit offenders to some house of correction, &c.

and be as advantageous to him, as if he had read as a clerk, any law or usage to the contrary notwithstanding. And that the said Justices, before whom such offender or offenders shall be tried and convicted, shall also, at their discretion, award and give judgment, that such offender and offenders shall be committed to some house of correction, or public work-house, within the county, city, town or place, where such conviction shall be, there to remain and be kept, without bail or main-prize, for such time as such Justices shall then judge and award, not less than six months, and not exceeding two years, to be accounted from the time of such conviction, and an entry thereof shall be made of record, pursuant to such judgment and award; and such offender and offenders, so judged and awarded to remain and be kept in such house of correction or public work-house, shall be there set at work and kept at hard labour, for and during such time as shall be so adjudged and recorded: And in case such person or persons shall refuse or neglect to work and labour as they ought to do, the master or keeper of such house of correction, or public work-house, respectively, is hereby required to give such persons, such due correction as shall be fit and necessary in that behalf.} (p)

If offenders escape, and be re-taken, to be committed, &c.

[XX. *And be it further enacted*, That in case any such offender or offenders shall, after such judgment given, escape out of prison, or out of such house of correction or public work-house, as he, she or they shall be committed unto as aforesaid, such person or persons being afterwards re-taken, shall be brought before one or more of the Provincial Judges, or before two or more of the Justices of the Peace of such county, city, town or place, where such offender or offenders shall be so re-taken; which Judge or Justices are hereby required to commit such offender and offenders to some house of correction, or public work-house within such county, city, town, or place, where he, she or they shall be so re-taken, there to remain, without bail or main-prize, for any time not less than twelve months, and not exceeding four years, to be accounted from the time of such re-taking, and there be set at work, and kept at hard labour, and receive such due correction as aforesaid. And in case any master or keeper of any house of correction, or public work-house, shall neglect to do his duty as above directed, any Judge or Justice of Gaol Delivery, upon complaint and due proof thereof, upon the oath or affirmation of one or more witnesses to him made, shall be and is hereby empowered to remove such person from his said office.] (q)

The master of such work-house removable.

A woman convicted of felony may have the benefit of this act.

XXI. *And be it further enacted*, That where a man being convicted of any felony, for which he may demand the benefit of his clergy, if a woman be convicted for the same or like offence, upon her prayer to have the benefit of this act, judgment of death shall

(p) By the 9th section of the act of the 24th of April, 1794, (chap. 1766,) the claim to benefit of clergy, and to the benefit of the act in the text, is abolished, and this section is superseded and supplied.—Every person convicted of any felony previously deemed clergyable is now to be sentenced to confine-

ment at hard labour, except in cases where some other specific penalty is prescribed by the act of the 5th of April, 1790, (chap. 1505,) or the act of the 24th of April, 1794, (chap. 1766.)

(q) This section is superseded and supplied, (chap. 1505, sect. 21, 22.)



not be given against her upon such conviction, or execution awarded upon any outlawry for such offence, but shall suffer the same punishment as a man should suffer, that has the benefit of his clergy allowed him in the like case; *that is to say*, shall be burnt in the hand, in manner aforesaid; and further, to be kept in prison for such time as the justices in their discretion shall think fit, so as the same do not exceed one year. But if any man or woman, who have once had the benefit of this act as aforesaid, and shall be again convicted of any other felony, hereby made capital or felony of death, for which a man might have the benefit of his clergy, every such man and woman shall be, and are hereby totally excluded from having any benefit or advantage of this act, but shall suffer pains of death, as in cases where the benefit of clergy is by law taken away.] (r)

1718.

Benefit of  
this act not  
to be had  
twice.

XXII. And be it further enacted, That where any murder or felony hath been, or hereafter shall be committed in one county of this province, and one or more persons shall be accessory or accessaries to any such murder or felony in another county, that then an indictment found or taken against such accessory or accessaries, upon the circumstances of such matter, before justices of the peace, or other justices or commissioners, to enquire of felonies in the county, where such offences of accessory or accessaries, in any manner, have been or shall be committed or done, shall be as good and effectual in law, as if the said principal offence had been committed or done within the same county, where the indictment against such accessory hath been or shall be found.

Felonies  
committed  
in one coun-  
ty, and ac-  
cessaries in  
another, in  
indictment  
against such  
accessary  
shall be effec-  
tual.

XXIII. And that the justices of the said Supreme Court, or two of them, upon suit to them made, shall write to the keepers of the records, where such principal is or shall be hereafter attainted, or convict, to certify them whether such principal be attainted, convicted, or otherwise discharged of such principal felony; who, upon such writing to them or any of them directed shall make sufficient certificate in writing, under their seal or seals, to the said justices, whether such principal be attainted, convicted, or otherwise discharged, or not. And after they, [who] so have the custody of such records, do certify, that such principal is attainted, convicted or otherwise discharged of such offence by the law, then the justices of gaol delivery, or of oyer and terminer, shall proceed upon every such accessory, in the county where he or they became accessory, in such manner and form, as if both the said principal offence and accessory had been committed and done in the same county, where the offence of accessory was or shall be committed or done. And that every such accessory, and other offenders, as above expressed, shall answer upon their arraignments, and receive such trial, judgment, order and execution, and suffer such forfeitures, pains and penalties, as is used in other cases of felony, and as the statute made in the second and third years of King Edward the Sixth, (chap. 24,) entitled, *An act for the trial of murders and felonies committed in several counties*, doth direct in such cases; which sta-

Proceedings  
against ac-  
cessaries.

How they  
shall be  
tried.

(r) This section is rescinded and supplied by the 9th section of the act of the 24th of April, 1794, (chap. 1766.) See the note subjoined to sect. 19, *supra*.



1718. tute shall be observed in this province, any law or usage to the contrary notwithstanding. (*s*)

Penalties,  
&c. on sub-  
ornation of  
perjury.

XXIV. *And be it further enacted*, That every person who shall unlawfully and corruptly procure any witness to commit wilful and corrupt perjury, in any matter or cause depending in suit and variance, in any of the courts of judicature in this province, or shall unlawfully and corruptly procure and suborn any witness to testify, upon oath or affirmation, in any matter, cause or thing whatsoever, such offender shall forfeit the sum of forty pounds, one half thereof to the governor, for the support of this government, and the other half to the party grieved: But for want of lands, goods or chattels, to satisfy the said forty pounds, every such offender, being convicted or attainted of perjury or subornation aforesaid, shall for his said offence, suffer imprisonment by the space of six months, without bail, and stand on the pillory the space of one whole hour, in some market-town, or public place, where the offence was committed; and shall suffer all the other punishments, penalties, forfeitures and disabilities, which are inflicted upon such offenders by any law or statute of Great-Britain. (*t*)

XXV. And that the statute made in the fifth year of Queen Elizabeth, (chap. 9,) entitled, *An act for punishment of such persons as shall procure or commit any wilful perjury*, shall be observed in this province, and be duly put in execution, as well against those that shall falsify their affirmations, as those who shall falsify their oaths, or be convicted of subornation of perjury.

Justices of  
gaol delivery  
to give judg-  
ment, &c.  
against per-  
sons so re-  
prieved.

XXVI. *And be it further enacted*, That in all cases, where any person or persons have been or shall be found guilty of any of the said crimes, for which judgment of death should or may ensue, and shall be reprieved to prison, without judgment at that time given him, her or them, so found guilty; that those who now are, or hereafter shall be assigned justices, to deliver the gaol where any such guilty persons shall remain, are hereby impowered and authorized to give judgment of death, and award execution against such persons so found guilty, and reprieved, as the same justices, before whom such person or persons was or were found guilty, might have done before such reprieve.

No process  
to be dis-  
continued by  
issuing new  
commissions  
for justices,  
&c.

[XXVII. And that no manner of process or suit, made, sued or had, before any of the King's Justices of the Supreme or Provincial Court, Gaol Delivery, Oyer or Terminer, Justices of the Peace, or either the King's Commissioners, in this Province, shall not in any wise be discontinued, by the making and publishing of any new commission or association; or by altering the names of the Justices of the said Supreme Court, Gaol Delivery, Oyer or Terminer, Justices of Peace, or other the King's Commissioners; but that the new Justices of the said Supreme Court, Gaol Delivery, and of the

(*s*) For the law respecting accessaries, see the notes subjoined to sections 14, 15, 16, *supra*.

(*t*) The general provision in the section of the act of the 5th April, 1790, (chap. 1505,) virtually includes perjury, and subornation of perjury, which are now, therefore, punishable

by imprisonment at hard labour. For the offence of perjury, and subornation of perjury at elections, see the act of February 15th, 1799, (post. chap. 2009, sect. 20.)

For the forms of attestations allowed by different acts of assembly, see the note subjoined to the 3d section, *supra*.



Peace, and other Commissioners, may proceed, in every respect, as if the old Commissions, and Justices, and Commissioners, had still remained and continued unaltered.] (u) 1718.

[XXVIII. And that no process, pleas, complaints, suits, actions or proceedings whatsoever, which now are, or at any time hereafter shall be commenced, sued, brought or depending, before any of the said Justices of the Supreme Court, Justices of the Courts of Common Pleas, or other the King's Justices, Commissioners or Magistrates, in this province, shall be discontinued, or put without day, by reason of the death or removal of the Proprietary, or his Lieutenant-Governor of this province, or by the death, new commissions, or not coming of the said Justices or Commissioners, or any of them; but shall stand good and effectual in law, to all intents and purposes, notwithstanding the death or removal of the said Proprietary and Governor, or of the death, new commission, association, or not coming of the said Justices, or any of them.] (x)

Nor by the death or removal of the proprietary, &c.

[XXIX. And be it further enacted, That if any person or persons, after the first day of October, in this present year one thousand seven hundred and eighteen, shall commit any simple larceny, which is not by this act made felony of death, and be duly convicted thereof, at the Court of Quarter Sessions of the Peace, to be held for the respective county where such offence is committed, or where the offender becomes accessory in this province, he, she or they, so offending, their aiders, comforters and abettors, shall, for the first offence, restore the goods and chattels, so stolen, to the right owner or owners thereof, or shall pay him or them the full value of such goods, or so much of them as cannot be restored; which value shall be set by such persons as the court, before whom such offenders are convicted, shall appoint to do the same, upon their oaths or affirmations; and the said offenders shall also pay the costs of prosecution, with all such other sums of money as the same court shall allow for such owner or owners loss of time, charges and disbursements, in the apprehending and prosecution of such offenders. And moreover shall forfeit and pay the like value of the goods to the Governor, for the support of this government, and shall be committed to the common gaol of the county where they are convicted, there to remain till they make satisfaction for all the sums so to be adjudged or recovered against them; and moreover, shall be publicly whipped on his or their bare backs with stripes, well laid on, not exceeding twenty-one. And that he or they, who shall so as aforesaid be convicted of the second offence, and his and their aiders, comforters and abettors, shall pay to the right owner or owners of the goods and chattels, so stolen, the full value of such goods and chattels, or of so much of them as are not restored, which value shall be set as aforesaid; and the said offenders shall also pay the costs and charges aforesaid, to be allowed as abovementioned; and moreover, shall forfeit and pay the double value of the said goods to the Governor, for the support of this government, and shall be committed to the common gaol of the county where they are convicted, there to remain till they make satisfaction as aforesaid, and

The punishment of persons convicted of larceny.

For the first offence.

For the second offence.



1718. shall be publicly whipped on their bare backs with stripes, well laid on, not less than twenty one, nor exceeding forty. And he or they who shall be so as aforesaid convicted of the third offence, and his or their aiders or abettors, shall pay to the right owner or owners of such stolen goods the full value thereof, to be set as aforesaid ; and the said offenders shall also pay the costs and charges aforesaid, to be allowed as aforesaid ; and shall also forfeit and pay the like treble value to the Governor, for the support of this government, and shall be committed to the county gaol, there to remain till they make satisfaction as aforesaid ; and shall be publicly whipped on his or their bare backs with stripes, well laid on, not less than thirty-nine, nor exceeding fifty. And that the said Justices, before whom such offenders shall be tried and convicted of the third offence, shall also, at their discretion, award and give judgment, that such offenders shall be sent to some house of correction, or public work-house, and there to be set to work, corrected, and remain, without bail, for such time as the said Justices shall then judge and award, not less than twelve months, and not exceeding four years, to be accounted from the time of such conviction, and an entry shall be thereof made accordingly, as is herein above directed in other cases.] (y)

Imprisonments, &c. not to stop execution against their estates.

The form of such executions.

XXX. *Provided always, and be it further enacted*, That none of the said imprisonments hereby awarded, as part of the punishment of the said offenders, or any of them, shall stop or avoid the awarding or taking out of executions, to levy so much of the respective sums recovered against them as aforesaid, as such offenders refuse or neglect to pay, when such writs are taken out. Which executions shall be directed to the Sheriff or Coroner of the proper county, requiring him to levy the sums due upon such recoveries as aforesaid, of the lands and tenements, goods and chattels, of such offenders returnable to the Court of Quarter Sessions next after the date or test of such writs ; which shall be executed accordingly, and the lands, goods and chattels, thereby seized, shall be sold and conveyed by the said officers ; and such sales shall be as available and effectual in law, as any other sales of lands taken and sold for payment of debts, by virtue of writs of execution, awarded out of the Courts of Common Pleas in the said respective counties. (z)

(y) This section is, in a great measure, superseded and supplied. By the act of the 5th of April, 1790, (chap. 1505, sect. 24,) the punishment to be inflicted for simple larceny to the value of twenty shillings, or for being an accessory before the fact, is imprisonment at hard labour, restitution of the stolen goods, and forfeiture of the value to the state ; and for petty larceny, the same punishment, differing only in the degree, is inflicted. By the 5th section of the same act, the robbery and larceny of obligations or bonds, and other specified paper securities, are put on the same footing as of any goods or chattels. Of the law respecting restitution of stolen goods, see chap. 1572. But by an act of the 28th of February,

1787, (chap. 1250,) it is declared, that felons committed till they make such restitution shall have the benefit of the insolvent laws ; which privilege, a subsequent act of the 27th of March, 1790, (chap. 1485,) modified, so as to empower the court to direct the felon to perform additional labour, in commutation of the restitution.

(z) The remedy given by this section to enforce restitution, in the cases of conviction for larceny, is extended to the cases of conviction for robbery and burglary ; and the forfeiture of the convict's lands and chattels is limited to the residue, after making such restitution. See the note to the preceding section.

[XXXI. *And be it further enacted*, That all the said forfeitures, 1718. arising from offenders who shall be convicted of the said simple larcenies, and by this act directed to be applied for support of government, shall be duly levied by the Sheriffs of the respective counties, and shall be paid into the treasury of this province, from time to time, as soon as the same can be levied; and the provincial Treasurer for the time being, shall keep true and just accounts thereof, and shall issue and pay the same to the use and public service of this government. *Provided*, That the forfeitures arising from the said simple larcenies, committed within the city of Philadelphia, shall go as their charter directs. *Provided also, and it is hereby enacted, and declared*, That the testimony of the said owners of stolen goods shall be allowed and taken to be good evidence, to convict the said felons for such stealing: And that the law of this province, entitled, *An Act against robbing and stealing*, passed in the fourth year of the late Queen Anne; and another act, directing the punishment of petty larceny under five shillings, shall be and are hereby repealed.] (a)

Forfeitures to be paid to the provincial treasurer:

Excepting Philadelphia. The testimony of owners of stolen goods to be evidence.

XXXII. *And be it further enacted*, That if any person or persons shall agree or compound, or take satisfaction, for any stealing or goods stolen, such person shall forfeit twice the value of the sums agreed for or taken: but no person shall be debarred from taking his goods back, which are stolen, provided he prosecute the felon.

Such as compound for stolen goods forfeit twice the value, &c.

XXXIII. *Provided always, and be it further enacted*, That no indictment, presentment or inquisition, or any process whatsoever, now depending in any Court within this province, for any of the crimes or offences mentioned in this act, shall be discontinued, abated or quashed, for or by reason of this act, or any thing therein contained; but that the Judges and Justices of the respective courts within this province shall proceed to hear, try and determine, the said offences in such indictments, presentments and inquisitions, mentioned to be committed against any act or acts of Assembly of this province, as were in force at the time of finding, making or taking the said indictments, presentments and inquisitions, and thereupon to give judgment and award execution, according to the direction of the said respective acts of Assembly, upon which the said indictments, presentments or inquisitions, are founded, as if the same act or acts of Assembly were by a special clause in this act continued for that purpose, any thing herein contained to the contrary notwithstanding.

No indictment, &c. now depending, shall be discontinued. [Obsolete.]

Passed 31st May, 1718.—Recorded A. vol. II. page 190.

(a) See the existing law for the collection of fines and forfeitures. See, likewise, the acts relating to the corporation of Philadelphia, (chap. 1383.) And for the acts here repealed, see ante. chapters 7, 107. (*Notes to former edition.*)—[Sheriffs to account yearly, &c. See the act of April 17th, 1807, (post. chap. 2858, sect. 4.).]



# A C T S

OF THE

## General Assembly of Pennsylvania,

Passed at a Session which commenced October 14th, 1720,  
and continued by adjournments to August 26th, 1721.

1721.

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WILLIAM KEITH, LIEUTENANT GOVERNOR.

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### CHAPTER CCXLII.

*An ACT for regulating party-walls, buildings, and partition-fences, in the city of Philadelphia. (b)*

WHEREAS divers inconveniences, irregularities and controversies, have lately been, and still frequently happen, in relation to par-

(b) This act had lain dormant and inoperative for some time, in consequence of the dissolution of the Corporation of Philadelphia, at the time of the revolution; the Corporation alone being empowered to appoint Surveyors and Regulators. It was, therefore, amended and rendered effectual by the act of the 15th of April, 1782, (chap. 971.) By the latter act, the power of appointing the Surveyors and Regulators was vested in any four or more of the Justices of the Peace of the city and county of Philadelphia; appeals from the orders of the Regulators were directed to be made to the Court of Common Pleas; the penalty on laying the foundation of a party wall, before it was adjusted and marked out by the Regulators, was raised to £.10 to be recoverable within twelve months; provision was made for ascertaining the northern and southern boundaries of the city; the Regulators and Justices, on appeal, were directed to keep records of their orders, &c. the fees of regulators were prescribed, and they were empowered at all seasonable hours to enter on any lot in the city, in order to perform their duties; and the streets which have been opened by private persons and dedicated to public use, or which have been laid out by the Execu-

tive in pursuance of a law, are declared to be highways. The act, likewise, declared, that no length of possession of any part of a public street or way within the city should be available, as a bar to prevent the removal of a nuisance; [and in 1 Dallas's Reports, page 150, it was decided to be no justification, on an indictment, for a nuisance by intruding on the public property, that the public was benefited;] that no vaults should be dug under the street, without first obtaining leave from the four Justices aforesaid, and a majority of the Regulators; and that within three months, iron grates of a specified make and size should be placed over all vaults, where grates of a different kind had been previously placed. The 12th section of the act which empowered the Commissioners to remove all trees from the streets, was repealed on the 20th of September, 1782, (chap. 979.) But for the revival of the jurisdiction of the Corporation in appointing regulators, &c. sec. chapter 1383, sect. 29, 30. See, likewise, the acts for regulating the streets, &c. in Southwark, (post. chap. 481,) and the acts there referred to; and the acts regulating the streets, &c. in the Northern-Liberties, (post. chap. 624,) and the acts there referred to.

ty-walls, and laying the foundation of buildings, in the city of Philadelphia : For the remedying whereof for the future, *Be it enacted*, **That** no person or persons, builder or builders, whatsoever, shall, from and after the twenty-fifth day of March, one thousand seven hundred and twenty-one, lay the foundation of any building or party-wall within the said city, before they have applied themselves to the surveyors or regulators, to be appointed by the Mayor and Commonalty of the said city, in their Common Council, who are hereby empowered to appoint two or more discreet and skilful persons for that purpose. (c)

1721.

Regulators  
to be ap-  
pointed by  
the Mayor,  
&c.

**II.** *And be it further enacted*, **That** the said surveyors or regulators, upon application to them made, shall have full power and authority to enter upon the land of any person or persons, in order to set out the foundations, and regulate the walls to be built between party and party, as to the breadth or thickness thereof : Which foundation shall be laid equally upon the lands of the persons, between whom such party-wall is to be made ; and the first builder shall be reimbursed one moiety of the charge of such party-wall, or for so much thereof as the next builder shall have occasion to make use of, before such next builder shall any ways use or break into the said wall. The charge or value thereof to be set by the said regulators. (d)

Their power.

The first  
builder of a  
party-wall  
shall be re-  
paid, &c.

**III.** *And be it further enacted*, **That** if any person or persons shall, of their own authority, presume to begin or lay the foundation of any party-wall, before the same be viewed and directed by the said regulators, or some two of them, every such person, as well employer as master-builder, shall forfeit the sum of five pounds : One half to the prosecutor or informer, and the other half to the public use and benefit of the said city ; to be recovered by bill, plaint or information, in the Court of Common Pleas, to be held for the city and county of Philadelphia, wherein no protection or wager of law shall be allowed, nor any more than one imparlance.] (e)

Penalty on  
laying a  
foundation,  
without be-  
ing viewed,  
&c.

**IV.** *Provided always, and be it further enacted*, **That** if either party, between whom such foundation or party-wall is to be made, shall find themselves any ways aggrieved, by the order or direction of the said regulators, he or they may appeal to the Mayor and Commonalty of the said city, at their next Common Council, who shall finally adjust and settle the same ; which shall conclude and bind all parties ; the costs whereof to be paid as the Mayor and Commonalty shall direct and appoint.] (f)

Persons find-  
ing them-  
selves ag-  
grieved may  
apply to the  
Mayor, &c.

(c) The act of the 15th of April, 1782, (chap. 1549,) gave the power of appointing regulators to the Justices ; but on the revival of the Corporation, that power was incidentally restored, (chap. 1383.)

(d) The claim for a reimbursement of the moiety of the cost of a party-wall is not a lien upon the land, but only a personal charge against the builder of the second house. 1 Dallas, 341.

(e) This section is supplied ; the penalty for laying the foundation of a party-wall, before it is marked by the Regulators, is raised to £.10, and the

prosecution for recovering it is limited to twelve months, (chap. 1549.)

(f) The appeal from the Regulators was directed to be made to the Court of Common Pleas, by the act of 15th April, 1782, (chap. 971.)

On appeal from an order of the Regulators of Southwark, the Court observed, that a feigned issue, to try the controverted question, can only determine whether the regulators have done right or not ; it cannot determine the title, and finally settle the matter. For this reason it was thought proper to try the question by ejectment. 1 Dallas, 308.



1721.

The Regulators fees.

V. *And be it further enacted*, That the said regulators or surveyors, attending the said service, for their pains and trouble in and about the premises, shall be paid, by the party or parties concerned in such foundation, or erecting such party-wall, the sum of three shillings each. (*g*)

Regulation of partition fences, &amp;c.

VI. *And be it further enacted*, That the said surveyors or regulators, or any two of them, shall have full power to regulate partition-fences within the said city; and where the adjoining parties do improve or inclose their lots, such fences shall be made in the manner generally used, and kept in good repair, at the equal cost of the parties, so that the price for making exceed not forty shillings for every hundred feet, unless the owners or possessors, between whom such fence is or shall be erected, do agree otherwise. (*h*)

Cost of erecting and repairing such fences, how to be recovered.

VII. *And be it further enacted*, That if either party, between whom such partition-fence is or shall be made, shall neglect or refuse to pay his part or moiety for the repairing or setting up of such partition-fence as aforesaid, that then the party, at whose cost the same was so repaired or set up, may have either his action at law, or have the same determined as in cases of debts under forty shillings, as the case may require.

Passed 24th February, 1721.—Recorded A. vol. II. page 214.

(*g*) This section is altered and supplied by (chap. 1549,) sect. 8.

(*h*) For the acts regulating and maintaining fences, generally, see ante. chap. 56, page 14, and the notes there subjoined. (*Notes to former edition.*)

[The regulation of a lot by Regulators, under the act of March 9th, 1771, (post. chap. 624,) from which no appeal is entered to the Common Pleas, is *conclusive* as to the foundations and party-walls of buildings erected conformably thereto, but not so as to the lines of the lot, on which there are no buildings. *Godshall v. Mariani*. 1 Binney, 352.

April 18th, 1795, The following acts were passed—

Chapter 1448 “An act to empower the corporation of the city of Philadel-

phia to oblige the owners and occupiers of houses in the said city, to provide buckets, to be used in extinguishing fires.”

Chapter 1449, “An act to authorize the corporation of the city of *Philadelphia* to prevent the erecting of wooden buildings in certain parts of the city of *Philadelphia*.”

The validity of this last mentioned act, was brought into question before the Supreme Court, and it was determined to be constitutional. MSS. Reports, Supreme Court.

See the index to this edition, title *Philadelphia*, where all the laws and regulations respecting the city and liberties, are digested, and brought into one view.]

## CHAPTER CCXLIV.

*A Supplementary ACT to a law of this province, entitled an act that no public house or inn, within this province, be kept without licence. (i)*

WHEREAS, divers persons within this province, under colour of retailing rum and other strong liquors without doors, for the conveniency and supply of the inhabitants in their families, and, for that end, having obtained permits from the Collector of the excise,

(*i*) For the act, to which this is a supplement, and a general reference to the laws respecting public houses and

taverns, see ante. page 73, (chap. 172,) and the notes there subjoined. (*Note to former edition.*)



do sell, in or about their houses, drams and strong liquors by small measures, as well to servants as others, contrary to the true intent and meaning of the laws of this province: And whereas divers inn-holders or tavern-keepers do frequently entertain and suffer minors and servants to be tippling in their houses; all which being to the great damage of the inhabitants, and manifestly tending to the corrupting of youth, and promoting vice and immorality: For preventing thereof, *Be it enacted*, That no recommendation shall be issued by the Justices of the respective counties of this province, or the city of Philadelphia, in order to obtain licence from the Governor for the keeping any tavern or public house, as directed by an act of this province, entitled *An act that no public house or inn, within this province, be kept without licence*, before the person or persons, desiring such recommendation, shall become bound in the Prothonotary's office, unto the Governor for the time being, with security if required, in any sum not exceeding one hundred pounds, that he or she, on obtaining such licence, shall at all times be of good behaviour, and observe all the laws and ordinances, which are and shall be made relating to inn-keepers or taverners within this province. And who-  
soever shall keep a tavern, inn, or public house of entertainment, before he or she hath given bond as aforesaid, such person shall suffer the same penalty, as if the same had been done without licence.

1721.

No recommendation to be issued &c. before bond given, &c. (repealed.)

Penalty.

II. *And be it further enacted*, That no person or persons, within this province, other than such who are or shall be qualified so to do by the above recited law, shall presume, by virtue of any permit from the collector of the excise, or under any other colour or pretence whatsoever, to sell, barter with, or deliver any wine, rum, brandy or other spirits, beer, cyder, or any mixed or strong liquors, which shall be used or drank within their houses, yards or sheds, or which shall be, with their knowledge, privity or consent, used or drank in any shelters, places or woods, near or adjacent to them, by companies of negroes, servants, or others; or to retail or sell to any person or persons whatsoever, any rum, brandy, or other spirits, by less quantity or measure than one quart; nor any wine, by any less quantity or measure than one gallon; nor any beer, ale or cyder, by any less quantity than two gallons; and the same liquors respectively delivered to one person, and at one time, without any collusion or fraud, contrary to the true intent and meaning of this act, under the same penalty mentioned in the said recited act for keeping public-house, or selling liquors without licence.

No persons unqualified may sell liquors by small measure.

III. *And be it further enacted*, That no person or persons, keeping a public-house or inn, shall trust or give credit to any person whatsoever, for liquors, or any other inn or tavern reckonings, in any sum exceeding twenty shillings, under the penalty of forfeiting and losing any such debt. And if any inn-holder or keeper of a public-house, or any retailers of liquors within this province, shall receive, harbour, entertain or trust any minor, under the age of twenty-one years, or any servant, knowing them to be such, or after having been cautioned or warned to the contrary, by the parent, guardian, master or mistress, of such minor or servant, in the presence of one or more credible witness or witnesses, such inn-holder, keeper of public-house, or retailers of liquors, so offending, shall,

Tavern-keepers not to trust above the value of twenty shillings.

Minors and servants not to be trusted.



1721. for the first or second offence, being duly convicted thereof, forfeit and pay the sum of twenty shillings for every such offence, over and above the loss and forfeiture of any debt such minor or servant shall or may contract for liquors or entertainment : and upon conviction for the third offence, the licence obtained by such offender is hereby declared null and void, and the person, so repeatedly offending, shall forfeit and pay the sum of five pounds, and be for ever after incapable of keeping a public-house, or inn within this province.

Penalty on  
furnishing  
slaves with  
liquors or  
harbouring  
them.

IV. *And be it further enacted*, That no person whatsoever, within this province, shall presume by any means to furnish, supply or sell to any Negro or Indian servants, any rum, brandy, spirits, or any other strong liquors whatsoever, mixed or unmixed, either within or without doors, or shall receive, harbour or entertain any Negro or Indian servant, in or about their houses, without special licence had and obtained, under the hand of the master or mistress of such Negro or Indian servant, respectively, under the penalty of forfeiting and paying, for the first offence, twenty shillings, and for the second, and every offence after, thirty shillings ; to be recovered before any one Justice of the Peace of the county where the offence is committed, upon proof of one or more credible witness or witnesses, or upon the view of any Magistrate within the respective counties of this province, where the fact shall be committed.

Persons su-  
ing for a ta-  
vern debt  
above twen-  
ty shillings,  
to be non-  
sued, and  
pay double  
costs.

V. *And be it further enacted*, That if any person or persons, keeping a public-house or inn, or retailing liquors, as aforesaid, in this province, shall trust or credit any person for liquors, retailed, or other expenses, above twenty shillings as aforesaid, or shall presume to sue any such person, or shall arrest or attach any servant for any debt contracted for liquors or accommodations, knowing such person to be a servant, and after they have been warned or cautioned not to entertain such servant as aforesaid, all such actions and suits shall abate, and the person sued, and the master or mistress in behalf of such servant, or the said servants themselves, being sued as aforesaid, shall and may plead this act in bar ; and the plaintiff in such suit shall become non-suit, and pay double charges.

Fines how to  
be levied and  
disposed of.

VI. *And be it further enacted*, That the several fines, imposed by this act, shall be levied by execution on the offender's goods, or his or her person be committed to the county gaol, until the same be paid, upon conviction of the party before the Mayor or Recorder of the city of Philadelphia, for offences against this act committed in the city of Philadelphia ; and before any one or more of the Magistrates of the county, for offences committed in the respective counties ; and that all fines and forfeitures recovered by virtue of this act, which are not otherwise appropriated by any former act, shall be applied in manner following ; *that is to say*, the one moiety shall be paid to the father, mother, guardian, master or mistress, of the minor or servant entertained as aforesaid, or to the said servant, as the Magistrate shall direct ; and the other moiety shall be paid unto the overseers of the poor of the city or county where the offence is committed, for the use of the poor of the said city or county.



## CHAPTER CCXLV.

1721.

An ACT for preventing accidents that may happen by fire. (k)

*BE it enacted*, That if any master, or other person whatsoever, shall bream any ship, sloop or other vessel, with blazing fire, or cause the same to be done in any of the docks, or at any of the wharfs, within the limits of the city of Philadelphia, except in such place or places, as shall from time to time be appointed for that service, by the Mayor and Commonalty of the said city; and if any master, or other person whatsoever, shall heat, or cause to be heated, with blazing fire, any pitch, tar, turpentine, rosin, oil, tallow, or any sulphurous matter, for the use of any ship or vessel, other than such as shall be on the stocks, except in such places as shall be from time to time appointed as aforesaid, every such master, or other person whatsoever, doing or causing the same to be done, being convict thereof by one or more credible witnesses, before the Mayor and Recorder, or any two Magistrates of the said city, shall forfeit and pay the sum of five pounds for every such offence, together with costs of prosecution; one half whereof for the use of the person or persons, who shall sue or prosecute for the same, and the other half to be paid to the city Treasurer, for the use of the said city. (l)

Penalty on breaming vessels, and heating with blazing fire, pitch, &c. at the wharves in the city. except, &c. [This section is supplied by the 15th section of the act of March 28th, 1803, (post. chap. 2358.)]

II. *And be it further enacted*, That if any master or other person whatsoever, shall suffer any fire to be kept (candle excepted,) after the hour of eight in the evening, on board any ship or other vessel, lying in any of the docks, or at any of the wharfs aforesaid, or in the road before the said city, being convict thereof as aforesaid, shall, for every such offence, forfeit and pay the sum of ten shillings, for the uses aforesaid. *Provided always*, That it shall and may be lawful for the Mayor of the city of Philadelphia, for the time being, by licence under his hand, to permit the master of any vessel, lying in the road of Philadelphia aforesaid, to use fire on board such ship or vessel after the hour of eight aforesaid in case of sickness, or any other extraordinary occasion, any thing in this act to the contrary notwithstanding.

No fire to be kept on board any vessel after eight at night.

Without licence from the Mayor.

(k) See an act passed on the 6th February, 1731, (post. chap. 322,) for the better prevention of accidents by fire in the city of Philadelphia, by bake-houses and coopers' shops. See an act passed the 29th March, 1735, (post. chap. 338,) which was repealed and supplied on the 18th of April, 1794, (chap. 1732,) to prevent damages which may happen by firing of woods; and an act passed on the 9th of February, 1751, (post. chap. 388,) for more effectually preventing accidents that may happen by fire, &c. See, likewise, the acts for regulating the police of Southwark, (post. chap. 481;) and of the Northern Liberties, (post. chap. 624,) and an act for incorporating a company to insure against losses by fire, (post. chap. 576;) the acts incorporating the city of Philadelphia, (chap. 1383,) and the acts respecting the Wardens of the

port, (chap. 2358. March 28th, 1803.)

By an act of the 20th of March, 1772, (chap. 648,) particular regulations were introduced respecting chimney sweepers in the city of Philadelphia; and the act in the text, as far as it relates to firing of chimnies in the city, was repealed. On the same subject, see the acts of the 26th November, 1779, (chap. 875,) of the 29th of September, 1787, (chap. 1307;) and of the 2d of April, 1790, (chap. 1498.) (Note to former edition.)

(l) By the existing act respecting the Wardens of the port, it is provided, that if any person shall burn or bream any ship or vessel, or any part thereof, at or near any wharf, or between South and Vine-streets, in the city of Philadelphia he shall forfeit one hundred and fifty dollars. (Post. chap. 2358, sect. 15.) (Note to former edition.)



1721.

Penalty on  
firing of  
chimnies.

III. *And be it further enacted*, That if any person or persons within the city of Philadelphia, or towns of Chester, Bristol, Germantown, Darby, or Chichester, shall set on fire their chimnies, to cleanse them, or shall suffer them or any of them to take fire, and blaze out at the top, and be duly convicted thereof, by one credible witness, before any one Justice of the Peace of the said city or counties, such person or persons shall forfeit and pay for every such offence twenty shillings, for the use of the said city or towns respectively, where such offence shall happen. And the first paragraph of an act of Assembly of this province, imposing a fine of forty shillings upon every person that shall fire, or suffer their chimnies to be fired, shall and is hereby declared to be repealed and made void. (m)

Fire-works  
not to be  
fired in Phi-  
ladelphia,  
without the  
Governor's  
licence.

IV. And whereas much mischief may happen by shooting of guns, throwing, casting and firing of squibs, serpents, rockets, and other fire-works, within the city of Philadelphia, if not speedily prevented : *Be it therefore enacted*, That if any person or persons, of what sex, age, degree or quality soever, from and after publication hereof, shall fire any gun or other fire-arms, or shall make, or cause to be made, or sell or utter, or offer to expose to sale, any squibs, rockets, or other fire-works, or shall cast, throw or fire, any squibs, rockets, or other fire-works, within the city of Philadelphia, without the Governor's special licence for the same, of which licence due notice shall first be given to the Mayor of the said city, such person or persons so offending, and being thereof convicted before any one Justice of the Peace of the said city, either by confession of the party so offending, or by the view of any of the said Justices, or by the oath or affirmation of one or more witnesses, shall for every such offence forfeit and pay the sum of five shillings ; one half to the use of the poor of the said city, and the other half to the use of him or them who shall prosecute, and cause such offender to be as aforesaid convicted ; which forfeitures shall be levied by distress and sale of the offender's goods as aforesaid ; and for want of such distress, if the offender refuse to pay the said forfeiture, he shall be committed to prison, for every such offence the space of two days, without bail or main-prize : *Provided*, That such conviction be made within ten days after such offence committed. And if such offender be a Negro or Indian slave, he shall, instead of imprisonment, be publicly whipped, at the discretion of the Magistrate. (n)

Limitation  
of prosecu-  
tions.

Passed 26th August, 1721.—Recorded A. vol. II. page 219.

(m) By the act of the 9th of February, 1751, (post. chap. 388,) the penalties of this act are extended to firing chimnies, &c. in any county town, or other town or borough, already built and settled, or that may hereafter be built and settled ; but on the introduction of special regulations, respecting chimney sweepers in the city of Philadelphia, the act in the text, so far as it relates to firing chimnies in the city was repealed : See chap. 648. (*Note to former edition.*)

(n) By the act of 9th February, 1751, (post. chap. 388,) the penalties of the act in the text, for the offences described in this section, are extended to all county towns or other towns or boroughs, built and settled, or that may hereafter be built and settled.

By the act for the gradual abolition of slavery, (chap. 870,) it is declared, that Negro and Mulatto slaves shall be tried and punished in like manner as other inhabitants of the state. (*Note to former edition.*)

# A C T S

OF THE

## General Assembly of Pennsylvania,

Passed at a Session which commenced October 14th, 1721,  
and ended May 21st, 1722.

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WILLIAM KEITH, LIEUTENANT-GOVERNOR.

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1722.

### CHAPTER CCLV.

*An ACT for establishing Courts of Judicature in this province (o)*

WHEREAS the late King Charles the second, by his royal charter and grant to William Penn, Esquire, of that tract of land, called Pennsylvania, and for erecting the same into a province, did, for himself, his heirs and successors, grant free, full and absolute power to the said William Penn, and his heirs, and to his and their Deputies and Lieutenants, for the good and happy government of

(o) The Courts of Justice have undergone a variety of alterations in constitution and jurisdiction, of which the following summary will present a general view, and the specific variations will be mentioned in the notes to the respective sections.

I. Of the state and alterations of the Judicial Department, preceding the revolution.—Several acts had been passed before the one in the text for establishing Courts of Justice; but these being chiefly repealed, it is only necessary to recapitulate the powers which were given by other laws, and which remain vested in the existing Courts. Thus, the Justices of the County Courts, were empowered to lay out cart-ways to the public road, (chap. 55) to appoint viewers of partition fences, (chap. 56) to superintend the erection of bridges, and the laying out of highways (chap. 57.) No member of a Court of Justice was allowed to sit while his

own cause was on trial, (chap. 102.) The County Courts were empowered to appoint persons to receive claims for the reward allowed for killing black-birds and crows, (chap. 112.) The office of Register-General of wills, &c. was instituted, (chap. 133, sect. 8, and chap. 187.) The Justices of each county were empowered to grant writs of replevin, (ante. chap. 139,) and to issue writs of foreign attachment, (ante. chap. 142.) County seals were established, (ante. chap. 149.) The defalcation of debts was allowed in actions depending in the several Courts, and the mode and effect of references regulated, (ante. chap. 150.) Regulations respecting bail were prescribed, (ante. chapters 151, 153.) Process for taking lands in execution was adopted and regulated, (ante. chap. 152.) The proceedings to recover on mortgages were detailed, (ante. chap. 152, sect. 6.) The authority to recommend for tavern li-



1722. the said country, by and with the advice, assent and approbation, of the freemen of the said country, or of the greater part of them, or

cences was vested in the County Courts, (ante. chap. 172.) The periods for commencing actions were limited, (ante. chapters 196, 207, sect. 6.) The Orphans' Court was established, (ante. chap. 197.) Provision was made for the acknowledgment and recording of deeds, (ante. chap. 208.) The jurisdiction of the Justices of the Peace for the recovery of small debts was instituted, (ante. chap. 211.) The respective Courts of Quarter Sessions were empowered to make orders for building houses of correction, (ante. chap. 229.) And also to set prices on liquors and provender for horses, (ante. chap. 235.) The penal laws were reduced into one act, (ante. chap. 236,) to which, and the notes there subjoined, particular reference must be had. Provision was made for regulating party-walls, building, and partition fences, (ante. chap. 242.) [Several of the above cited acts are repealed, and many of them afterwards supplied.]

Subsequent to the passing of the act in the text, the following amendments and variations occurred. The proceedings respecting attachments as well foreign as domestic were rectified, (ante. chap. 142, post. chap. 263, 399, 669.)

The practice on writs of summons and arrest was regulated, (post. chap. 285.) The mode of barring estates tail by fine and recovery was recognized, (post. chap. 384, see chap. 2003.) The process on taking lands in execution was improved, (ante. chap. 48, 152, post. chap. 510.) The inconveniences arising from delays of causes after issue joined were obviated, by granting, on one term's notice, rules for trial or *non pros*, (post. chap. 556.) By an act of the 20th of May, 1767, (post. chap. 560) so much of the act in the text as relates to the appointment of the Justices of the Supreme Court, and the times of going the circuit, was repealed; four Justices (one of whom to be styled Chief Justice) were directed to be appointed; they were enjoined to go the circuit twice in every year, at such times as they should appoint; provision was made for defraying their expences on the circuit, and for their passing all ferries, with their attendants, free of toll. The removal of causes under £.50 value from the Courts of Common Pleas into the Supreme Court was prohibited, under the penalty of paying costs, if removed by the plaintiff, and double costs if removed by the defendant; but the prohibition did not extend to actions of

debt for rent, replevin, ejectment, trespass, or any other plaint or suit, wherein the title to lands, or any other real estate, might come in question. Appeals were not allowed from the Supreme Court, in any suit wherein there was a general verdict, or in any other case but where there was a demurrer to evidence, or bill of exceptions, or where a writ of error might legally be brought; and fines were imposed on non-attending jurors. Chapter 642, provides for the safety of Justices of the Peace and constables in executing their respective offices.—The proceedings on distress for rent are regulated, (chap. 645;) where likewise, provision is made for a landlord's obtaining speedy possession of the demised premises, after the expiration of the lease. A more easy mode of recovering legacies is provided, (chap. 654.) In order to prevent frauds and perjuries, it is declared, (chap. 669) that parol leases, &c. except leases for term of three years, shall only be construed to be leases or estates at will; that no leases, &c. shall be assigned, granted or surrendered, unless by deed, or note in writing, or by act and operation of law; that all judgments shall bear the date of signing the same on the record, and shall from that date, and not from the first day of the term, run against *bona fide* purchasers; and that no writ of *feri facias* shall bind the goods of the defendant, till delivered to the sheriff, and the date of delivery shall be accordingly indorsed thereon. Chap. 691, provides a specific mode to oblige the assignees of insolvent debtors, under voluntary assignments, &c. to perform their trust; and gives a process of domestic attachment against a debtor, who hides or absconds, in the nature of a commission of bankruptcy.

II. Of the state and alterations of the Judicial Department under the constitution of 1776 By that instrument it was provided, that the Judges of the Supreme Court should have fixed salaries, be commissioned for seven years only, though capable of a re-appointment, and removeable for misbehaviour at any time by the General Assembly. They were, also, disqualified from holding other offices, and receiving any fees or perquisites. It was declared, that the Supreme Court, and the several Courts of Common Pleas, should, besides the powers usually exercised by such Courts, have the powers of a Court of Chancery, so far as relates to



of their delegates or deputies, in Assembly, when and as often as need should require, to ordain, make and enact, any laws whatsoever. 1722.

the perpetuating testimony, obtaining evidence from places not within this state, and the care of the persons and estates of those who are *non compotes mentis*, and such other powers as might be found necessary by future General Assemblies, not inconsistent with the constitution. Trials were directed to be by jury as heretofore; and a general provision was made for the periodical meeting of the existing, and for the establishment of new, courts; for the appointment of Justices of the Peace; and for the institution of Registers and Recorders' Offices in each county.

In proceeding to organize the Judicial Department under the revolutionary change in our government, the Legislature declared generally, (chap. 726,) that the courts of justice should be held as heretofore. By chap. 743, the city court was established in lieu of the court held by the City Corporation. By chap. 766, soldiers were exempted from arrests for debts under 50 dollars. Provision was made for establishing a new seal for the Supreme Court, (chap. 765.) Proceedings on claims filed in the Supreme Court against forfeited estates were regulated, (chap. 773.) A speedy and effectual mode was established for the recovery of debts due to the United States, (chap. 778.) Replevins for goods taken in execution, or seized by any officer, under the authority of the state, are declared to be erroneous and void, (chap. 826.) A Court of Errors and Appeals was instituted, (chap. 868.) A Court of Admiralty was instituted, (chap. 876.) By chap. 924, provision is made for appointing Auditors to settle controverted accounts, for debts or demands due or payable or incurred on or before the 1st of March, 1781. By chap. 931, it is provided that claimants for city lots may, on request to the Executive, have a trial by jury in the Supreme Court only; and the proceedings thereupon are regulated. By an act of the 10th of April, 1782, (chap. 955,) special courts were to be allowed to plaintiffs, about to leave the state, as well as to defendants; and in cases depending in the Supreme Court, as well as in the Common Pleas; but the privilege allowed to plaintiffs was taken away by an act of the 27th of March, 1787, (chap. 1402.) An appeal allowed from the Regulators of party walls to the Common Pleas, (chap. 971.) Vexatious prosecutions and suits, against such as acted in this state for the de-

fense of the liberties of America, condemned and vacated, (chap. 1012.) The body, tackle, apparel and furniture of ships made liable for debts of the workmen employed in building and equipping them, (chap. 1077, 1641.) A power given to the Courts of Quarter Sessions, from time to time, to vacate certain roads, with an appeal from their decision to the Supreme Court, (chap. 1115.) The process on writs of *habeas corpus* regulated, for better securing personal liberty and preventing wrongful imprisonments, (chap. 1121.) An appeal allowed to the Supreme Court from the Comptroller-General's settlement of accounts, (chap. 1122.) The laws respecting juries revised and amended, (chap. 1127.) The limitation of real actions, and actions on penal acts, prescribed, (chap. 1134.) See, likewise, ante. chap. 196, and the limitation for claims to city lots and lands granted by the late proprietaries, &c. (chap. 931.) An appeal allowed from the Board of Wardens to the Supreme Court, (chap. 1159, 1687.) The jurisdiction concerning divorcees and alimony vested in the Supreme Court, (chap. 1176.) The Supreme Court empowered to supply defects in titles to lands occasioned by lost or defaced deeds, (chap. 1210.) The act revived, and the jurisdiction extended to the Court of Common Pleas, (chap. 1639.) By an act of the 25th of September, 1786, (chap. 1235,) it was provided that four terms should be held in the Supreme Court; the Court was vested with original jurisdiction within the city and county of Philadelphia; but that no suit should be commenced there for any debt or cause which arose before passing the act, except suits of the Commonwealth, and such where the title of land, or other real estate, might come in question; or that if in any suit the plaintiff did not recover more than £. 50, he should not be allowed costs. The court was empowered, also, to make rules for regulating its practice, and it was declared, that no suit should be removed from the Common Pleas, by any writ of *certiorari* issued for the plaintiff, nor by any writ of *habeas corpus* or *certiorari*, after the same shall have been at issue two terms or more. [But doubts having arisen on the construction of this section, it was explained by an act of the 28th of March, 1787, (chap. 1252,) so as not to prevent a plaintiff from removing into the Supreme Court any action which could not be originally instituted



1722. ever, for the public state, peace, and safety, of the said country, or unto the private utility of particular persons, unto their best

there.] The Prothonotary of the Supreme Court, and such other persons as the Justices should from time to time appoint, were empowered to act as Commissioners of Bail, in their respective counties; an additional tax was imposed on original writs issuing from the court; and an additional tax on writs and rules of reference issuing from the Common Pleas of Philadelphia county, for compensating the services of the President. The Escheator's Court and proceedings respecting escheats are regulated, (chap. 1505) By an act of the 11th of March, 1789, (chap. 1383,) the city of Philadelphia is incorporated; the Mayor's Court and the Alderman's Court are established; the City Court is abolished; and the jurisdiction of the Quarter Session excluded from the city. By an act of the 27th March, 1789, (chap. 1401,) the Justices of the Supreme Court in term time or a majority of them in vacation, are empowered to hold courts of *Nisi Prius* in the city of Philadelphia, for the city and county of Philadelphia. It is also declared, that no rule for a special jury shall be entered on the application of a defendant, unless an affidavit of a defence is previously filed; and so much of the act respecting juries, as provides that special juries shall be struck thirty days before the return of the *venire*, and that a copy of the rule and list for a special jury shall be served on the opposite party, is repealed. The process on foreign attachments is amended, (chap. 1434,) so as to compel the garnishee to answer interrogatories, and to authorize a *capias* against him, if he is about to depart from the State. Provision is made for confining persons committed under the process of the United States in the prisons of the State, (chap. 1461.)

III. The alterations and state of the Judicial Department under the existing constitution, established in 1790. In entering upon this part of our recapitulation, it is proper to premise, that the jurisdiction vested in the federal government has considerably circumscribed the judicial authority of the State, particularly in all matters of Admiralty cognizance. For the particulars, see the 3d article of the constitution of the United States, and the judicial act of Congress, passed the 24th day of September, 1789.

By the constitution of the State, it is provided, that the judicial power shall be vested in a Supreme Court, in Courts

of Oyer and Terminer, and General Gaol Delivery, in a Court of Common Pleas, Orphans' Court, Register's Court, and a Court of Quarter Sessions of the Peace for each county, in Justices of the Peace, and in such other Courts, as the Legislature may from time to time establish. All the Judges and Justices hold their commissions during good behaviour; removable, however, on impeachment, or the address of the Legislature. The compensations of the Judges of the Supreme Court are to be fixed, not to be diminished during their continuance in office; and they are prohibited from receiving any fees or perquisites, and from holding any other office of profit. The jurisdiction of the Supreme Court extends over the state, and the Judges are, *ex officio*, Justices of Oyer and Terminer and General Gaol Delivery, in the several counties. The Court of Common Pleas of each county shall consist of not fewer than three, nor more than four Judges; the state shall be divided into circuits of such courts, including not more than six, nor fewer than three counties; a President shall be appointed of the courts in each circuit; and the President and two Judges shall be a quorum. The Judges of the Common Pleas are, *ex officio*, Justices of Oyer and Terminer and General Gaol Delivery, for the trial of capital and other offenders, in their respective counties; any two of them, the President being one, shall be a quorum; but they shall not hold a Court of Oyer and Terminer or Gaol Delivery in any county, when the Judges of the Supreme Court, or any of them, shall be sitting in the same county; and their proceedings may be removed to the Supreme Court by either party. The Supreme Court and Courts of Common Pleas, beside the powers heretofore usually exercised, shall have Chancery jurisdiction to perpetuate testimony, to obtain evidence from places not within the State, and for the care of the persons and estates of those who are *non compos mentis*; and provision is made that the Legislature may vest in the said courts such other powers to grant relief in equity, as shall be found necessary, and may from time to time enlarge or diminish those powers, or vest them in such other courts as they shall judge proper for the due administration of justice. The judges of the Common Pleas of each county, any two of whom shall be a quorum, shall compose the Court of Quarter Sessions and



discretion; and likewise to do all and every thing and things, 1722.  
 which unto the complete establishment of justice, unto courts

Orphans' Court; and the Register of Wills, together with the said Judges, or any two of them, shall compose the Register's Court of each county. The Judges of the Common Pleas are vested with the like powers as the Judges of the Supreme Court, to issue writs of *certiorari* to the Justices of the Peace; and the Presidents, within their respective circuits, and the Judges of the Common Pleas, within their respective counties, are made Justices of the Peace, as far as relates to criminal matters. A competent number of Justices of the Peace shall be appointed in such convenient districts, as are or shall be directed by law; a Register office, for the probate of Wills and granting letters of administration, shall be kept in each county; the style of all process shall be, "*The Commonwealth of Pennsylvania*;" and all process shall be carried on and conclude, "*against the peace and dignity of the same*." Trials by jury shall remain as heretofore. In prosecutions for the publication of papers, investigating the official conduct of officers, or men in a public capacity, or where the matter published is proper for public information, the truth whereof may be given in evidence; and in all indictments for libels, the jury shall have a right to determine the law and the facts, under the direction of the court, as in other cases. Excessive bail shall not be required. No commission of Oyer and Terminer and General Gaol Delivery shall issue. See the constitution, articles 5 and 9.

The proceedings for organizing the Judicial department, under the preceding constitutional arrangements, will be found in the following summary: The powers of the late Executive Council relative to claims for city lots, &c. are vested in the Supreme Court, (chap. 1544.) The Supreme Court established, to hold three terms, and Courts of *Nisi Prius* as heretofore; the State divided into circuits for holding Courts of Common Pleas; the time for holding the several Courts of Common Pleas and Quarter Sessions and Orphans' Court prescribed, (chapters 1564, 1590;) the constitution and powers of the Register's Court declared; and proceedings on the removal of indictments, &c. into the Supreme Court regulated, (chap. 1564.) Where either party dies pending a writ, and before final judgment, his executor or administrator, if the cause of action survives, shall be admitted to prosecute and defend the action; how notice shall be

given in such case, (sect. 8.) The President and Judges of the Common Pleas empowered to issue writs of *habeas corpus*, in vacation, and give relief thereon, (sect. 9.) Prothonotaries of the respective Courts of Common Pleas empowered to sign judgments, and writs, and process, and to take bail, the same as if they were Judges, (ibid. sect. 12;) the Prothonotary of the Supreme Court empowered to enter judgments confessed, and to take bail on original actions, as well as those removed from other courts, ibid. Prothonotaries and clerks of Courts of Record empowered to administer oaths, &c. in conducting the business of the respective Courts, in as full a manner as any Judge or Justice, and to take acknowledgments of satisfaction of judgments and decrees, ibid. and (chap. 1590, sect. 8;) and proceedings are regulated to compel an entry of satisfaction on judgments that are paid off, ibid. sect. 14. No Judge of the Supreme Court, Common Pleas, Orphans' Court, Register's Court, &c. shall practise as an Attorney or Counsellor in any court in this commonwealth, or elsewhere, (ibid. sect. 15.) On final judgments in the Supreme Court, a writ of error lies to the High Court of Errors and Appeals, as does an appeal from the final sentence of the Register's Court, (ibid. sect. 16;) which is allowed in cases exceeding £.50 to the Supreme Court. (chap. 1740, sect. 24.) The constitution and jurisdiction of the High Court of Errors and Appeals instituted, and the proceedings on writs of error or appeals are regulated, (chap. 1564, sect. 16, 17, 18, 19, 20, 21, chap. 1590, 1620.) On a hearing in the Register's Courts, the depositions to be taken in writing; but on a dispute of facts, either party may be allowed to try the same on an issue in the Common Pleas; and no appeal from the Register's Court shall affect the proceedings of an executor or administrator, pending the same, if security is given, (chap. 1564, sect. 18.) The times for holding and continuing the Courts of General Quarter Sessions shall not exceed four days in every session, (chap. 1590, sect. 5.) Specific performance of contracts entered into by persons deceased, or persons afterwards becoming *non compotes mentis*, for the sale and conveyance of lands, how to be enforced, (chap. 1607, 1730,) see also chap. 2268. A naked authority given to executors to sell lands, &c. they shall take and hold the same in trust, and have the same power as if the lands,



1722. and tribunals, forms of Judicature, and manner of proceedings, do belong, and, by Judges, by the said William Penn, his heirs, their deputies and Lieutenants, appointed, to award process, hold pleas, and determine in all the said courts and tribunals all actions, suits and causes whatsoever, as well criminal as civil, personal, real and mixed: *Provided* the said laws so made and published be consonant to reason, and not repugnant or contrary, but, as near as convenient may be, agreeable to the laws, statutes and rights of the kingdom of England; saving and reserving to the said King Charles, his heirs and successors, the receiving hearing and determining of the appeal and appeals of all or any person or persons touching any judgment to be there made or given.

Court of  
Quarter Ses-  
sions to be  
held in each  
county four  
times a year.

II. And whereas, by virtue and in pursuance of the said grant, divers acts and ordinances have been made, from time to time, for the holding of courts, and the administration of justice within this province, which, by the increase of inhabitants, and change of circumstances of the country, seem necessary to be altered and amended, [*Be it therefore enacted*, That there shall be a court, styled the General Quarter Sessions of the Peace and Gaol Delivery, holden and kept four times in every year, in each county of this province, viz. At Philadelphia, for the county of Philadelphia, on the first Second Day of the Week, called Monday, in the months called March, June, September and December: At Bristol, for the county of Bucks, on the eleventh day following (inclusive) in every of the same months: And at Chester, for the county of Chester, on the last Third Day of the week, called Tuesday, in the months called May, August, November and February.] (*p*)

&c. were devised to them to be sold, saving to every testator the right to direct otherwise; (chap. 1607.) Proceedings on a suit at law, controverting the decision of the board of property, (chap. 1511, 1613, 1649.) Proceedings to supply defects in titles to land by the loss of deeds, &c. regulated, (chap. 1639.) Proceedings to attach vessels, &c. for payment of tradesmen employed in equipping them, regulated, (chap. 1641. The tax on writs issuing from the Common Pleas repealed, (chap. 1697.) Inhabitants of the city, &c. immediately concerned, shall be competent witnesses, in cases respecting the settlement of paupers, (chap. 1715.) A transcript of the judgment of a Justice of the Peace, filed in the Prothonotary's office, shall have like effect as a judgment in the Common Pleas, (chap. 1757.) The jurisdiction of Justices of the Peace extended to cases of usury under £.20; the times for holding the three terms of the Supreme Court altered to the first Monday in September, the second Monday in December, and the third Monday in March; September and March terms to continue two weeks, and December term three weeks, (chap. 1847.) The last, as well

as the first day of each term of the Supreme Court shall be a return day, provided the process is sued out under the same regulations of time, &c. as in the case of the first return day, *ibid.* But special days of return for process may be assigned by the court as usual. *ib.*

IV. For other matters connected with the Judicial Department, see the Penal Law, (ante. chap. 236;) the law respecting the Orphans' Court, (ante. chap. 197;) the laws regulating intestates estates, (chap. 1740;) the laws respecting insolvent debtors, (post. chap. 315;) the laws respecting the jurisdiction of Justices of the Peace, (ante. chap. 211,) now repealed; the laws respecting the office of Sheriffs and Coroners, Sheriffs' deeds, &c. (ante. chap. 161;) the laws respecting the probate, acknowledgment, and recording of deeds, (ante. chap. 208;) the law establishing a fee bill, (chap. 1852;) and the title *Judiciary Department*, in the index to this edition. (*Note to former Edition.*)

(*p*) This section has been repealed and supplied, (chap. 494,) [which is also repealed and supplied, and is not printed in this edition. See the acts founded on the existing constitution



[III. And that there shall be a competent number of Justices in every of the said counties, nominated and authorized by the Governor or Lieutenant-Governor for the time being, by commission under the broad seal of this province; which said Justices, or any three of them, shall and may hold the said General Sessions of the Peace and Gaol Delivery according to law, and as fully and effectually, as any Justice of the Peace, Justices of the Assize, Justices of Oyer and Terminer, or of Gaol Delivery, may or can do. (q) 1722.

The Governor to commission Justices who are to hold the said courts;

IV. And be it further enacted, That the said Justices of the Peace, or any three of them, may, pursuant to their said commissions, hold special and private sessions, when and as often as occasion shall require: and that the said Justices, and every of them, shall have full power and authority, in or out of sessions, to take all manner of recognizances and obligations, as any Justices of the Peace of Great-Britain may, can, or usually do; all which said recognizances and obligations shall be made to the King, and his successors. And all recognizances for the peace, behaviour, or for appearance, which shall be taken by any of the said Justices out of sessions, shall be certified into their said General Sessions of the Peace, to be holden next after the taking thereof: And every recognizance, taken before any of them, for suspicions of any manner of felony, or other crime, not triable in the said court of Quarter Sessions of the Peace and Gaol Delivery, shall be certified before the said Justices of the Supreme Court of Oyer and Terminer, at their next succeeding court to be holden next after the taking thereof, without concealment, detaining, or embezzling of the same. But in case any person or persons shall forfeit his or their recognizances of the peace, behaviour, or appearance, for any cause whatsoever, then the said recognizance so forfeited, with the record of the default, or cause of forfeiture, shall be sent and certified without delay, by the Justices of the Peace, into the said Supreme Court, as the case may require, that thence process may issue against the said parties, according to law. All which forfeitures shall be levied by the proper officers, and go to the Governor, for support of government. (r)

and private sessions, and have power to take recognizances out of sessions, which shall be certified into the next Quarter Sessions.

[See the Act of January 28th, 1777, (post. chap. 726, sect. 8.)]

V. And be it further enacted, That all fines and amerciaments, which shall be laid before the Justices of the said Courts of General Quarter Sessions of the Peace and Gaol Delivery shall be taxed, assessed, and set, duly and truly, according to the quality of the offence, without partiality or affection, and shall be yearly estreated by the clerks of the said courts respectively into the said Supreme Court, to the intent that process may be awarded to the She-

All fines to be assessed in the sessions and yearly estreated by the Supreme Court.

referred to in the last note to the act in the text.]

(q) Repealed and supplied by the 7th section of the fifth article of the constitution.

(r) By the existing constitution, the Justices of the Peace do not sit in the Courts of Quarter Sessions; and the power of holding a special or private sessions, given in the first part of this section, is obsolete, or, rather, virtually

repealed by the present arrangements of the Judicial Department. For the jurisdiction of the Judges of the Supreme Court, and of the Courts of Common Pleas, to hold Courts of Oyer and Terminer and General Gaol Delivery, and the offences exclusively cognizable by them, see the fifth article of the constitution, and the notes subjoined to the penal act, (ante. chap. 236.)



1722. riff of every county, as the case may require, for levying such of their fines and amerciaments as shall be unpaid, to the uses for which they are or shall be appropriated. (*s*)

Quarter Sessions how long to continue.

[VI. *Provided always*, That the said Courts of the General Quarter Sessions of the Peace may be kept and continued for the space of three days in the county of Philadelphia, at any of the times herein before appointed to hold and keep the same courts and sessions there; and for the space of two days in either of the said counties of Bucks and Chester respectively, at any of the said times herein before appointed to hold and keep the said courts and sessions there, in manner aforesaid. (*t*)]

This act not to abridge the powers of the corporation.

VII. *Provided also*, That nothing herein contained shall deprive or abridge the Mayor, Recorder and Aldermen of the city of Philadelphia, of any powers, privileges, jurisdictions or franchises, granted them by charter, or the laws of this province. (*u*)

Writs of capias, subpoenas, &c. granted in one county, to operate in another.

VIII. And to the end that persons indicted or out-lawed for felonies, or other offences, in one county or town corporate, who dwell, remove, or be received into another county or town corporate, may be brought to justice, *Be it further enacted*, That the said Justices, or any of them, shall and may direct their writs or precepts to all or any the Sheriffs or other officers of the said counties or towns corporate within this province, where need shall be, to take such persons indicted or outlawed. And that it shall and may be lawful to and for the said Justices, and every of them, to issue forth *subpoenas*, and other warrants, under their respective hands and seal of the county, into any county or place of this province, for summoning or bringing any person or persons to give evidence in and upon any matter or cause whatsoever, now or hereafter examinable, or in any ways triable, by or before them, or any of them, under such pains and penalties as *subpoenas*, or warrants of that kind, usually are or ought by law to be granted or awarded. (*x*)

Persons aggrieved, &c. may have their writs of error returnable to the Supreme Court.

IX. *And be it further enacted*, That if any person or persons shall find him or themselves aggrieved with the judgment of any of the said Courts of General Quarter Sessions of the Peace and Gaol Delivery, or any other Courts of Record, within this province, it shall and may be lawful to and for the party or parties, so

(*s*) This section is supplied, 2d vol. chap. 971.

(*t*) By an act of the 7th September, 1789, (chap. 1416,) the time of holding the Courts of Quarter Sessions were altered, and it was provided, that they might sit as many days as occasion should require. That act, however, has been repealed and supplied by subsequent arrangements on the subject, (chap. 1564, 1590, 1624, 1823, 1834, 1840,) and the continuance of the Courts of Quarter Sessions is limited to four days in every session.

(*u*) The revolution having dissolved the Corporation of Philadelphia, its jurisdiction in judicial matters was supplied by the institution of the City Court,

(chap. 743.) Since that period, however, the City has been again incorporated, the City Court is abolished, and a Mayor's Court and Alderman's Court are established, (chap. 1383.) By the incorporating act, it is declared, that the Justices of the Quarter Sessions shall have no more power in the city, than the Mayor, Recorder and Aldermen have in the county of Philadelphia, (ibid. sect. 29.)

(*x*) See ante. chap. 236, sect. 17. The process of outlawry has, however, been revised and regulated by the act of the 23d of September, 1791, (chap. 1572.) For decisions respecting writs of *subpoena*, see 1 Dallas, 272, 340.

aggrieved, to have his or their writ or writs of error ; which shall be granted them of course, in manner as other writs of error are to be granted, and made returnable to the said Supreme Court of this province. (y) 1722.

X. *Provided always*, That when any writ of error shall be granted upon any judgment given or to be given for the said city of Philadelphia, the Mayor, Recorder and Aldermen of the said city of Philadelphia, and their successors, or any of them, shall not be compelled upon any of the said writs, or any other writ or writs directed to them, or any of them, to remove, send or certify into the said Supreme Court, or elsewhere, any of the indictments or presentments taken or to be taken before them, or the record of the judgments and proceedings upon any such indictments or presentments, but only the tenors or transcripts of the said records, under their common seal. And after such judgments are reversed or affirmed, or causes lawfully removed from the said city courts are tried in the said Supreme Courts, it shall and may be lawful for the Mayor, Recorder and Aldermen, and their successors, to proceed to execution, or otherwise as shall appertain according to law. (z)

XI. *And be it further enacted*, That there shall be holden and kept at Philadelphia, a Court of Record twice in every year : *that is to say*, on the twenty-fourth day of September, and the tenth day of April, if the same days, or either, do not happen to be the first day of the week, and in such case the said court shall be held on the next day following ; which said court shall be called and styled, The Supreme Court of Pennsylvania. And that there shall be three persons of known integrity and ability, commissioned by the Governor, or his Lieutenant for the time being, by several distinct patents or commissions, under the great seal of this province, to be Judges of the said court, one of whom shall be distinguished in his commission by the name of Chief Justice. And every of the said Justices shall have full power and authority, by virtue of this act, when and as often as there may be occasion, to issue forth writs of *habeas corpus*, *certiorari*, and writs of error, and all remedial and other writs and process, returnable to the said court, and grantable by the said Judges by virtue of their office, in pursuance of the powers and authorities hereby given them. (a)

(y) For the constitution and jurisdiction of the High Court of Errors and Appeals, see chap. 1564, sect. 16, 17, &c. [This court is now abolished.]

(z) See the act incorporating the City of Philadelphia, (chap. 1383,) and the title *Judiciary Department*, in the index to this edition.

(a) So much of this section as respects the appointment of the Justices of the Supreme Court, was repealed and supplied, (post. chap. 560 ;) and the repealing act prescribed the appointment of four Justices instead of there ; and two circuits were directed to be performed in each year, at such times as the Judges should appoint.

The latter system was preserved after the revolution ; and under the existing constitution and laws, it is declared, that the Supreme Court shall be established in the same manner, and with the same power, as heretofore, consistently with the provisions of the constitution ; that it should have three terms ; and that courts of *Nisi Prius* might be held at such intermediate times, as the Justices should judge most convenient for the people, (chap. 1564.) The periods fixed by that act for the three terms were altered by a subsequent act, and the terms are now held on the first Monday in September, for two weeks, the second Monday in December, for

Of proceedings at the City Sessions, only the tenor, &c. to be certified into the Supreme Court.

The Supreme Court of Pennsylvania to be held at Philadelphia.

Justices to be commissioned ;

who shall issue remedial writs, &c.



1722.

Issues joined  
in the said  
Court shall  
be tried in the  
proper coun-  
ty.

[XII. *Provided always*, That upon any issue joined in the said Supreme Court, such issue shall be tried in the county from whence the cause was removed, before the Judges aforesaid, or any two of them, who are hereby empowered and required, if occasion require, to go the circuit twice in every year, into the respective counties of Chester and Bucks, to try such issues in fact as shall be depending in the said Supreme Court, and removed out of either of the counties, aforesaid; *that is to say*, in the county of Bucks on the fourteenth day of April, and the twenty-eighth day of September; and in the county of Chester, on the eighteenth day of April, and the second day of October, in every year; when and where they may try all issues joined, or to be joined, in the same Supreme Court, and to do generally all those things that shall be necessary for the trial of any issue, as fully as the Justices of Nisi Prius in England may or can do.] (b)

The power  
of the Jus-  
tices, &c.

XIII. And that the said Judges, or any two of them, shall have full power to hold the said court, and therein to hear and determine all causes, matters and things, cognizable in the said court, and also to hear and determine all and all manner of pleas, complaints and causes, which shall be removed or brought there from the respective General Quarter Sessions of the Peace, and Courts of Common Pleas, to be held for the respective counties of Philadelphia, Chester and Bucks, as also for the city of Philadelphia, or from any other court of this province, by virtue of any of the said writs; and to examine and correct all and all manner of errors of the Justices and Magistrates of this province, in their judgments, process and proceedings in the said courts, as well in all pleas of the crown, as in all pleas real, personal and mixed; and thereupon to reverse or affirm the said judgments, as the law doth or shall direct: And also to examine, correct and punish the contempts, omissions and neglects, favours, corruptions and defaults, of all or any of the Justices of the Peace, Sheriffs, Coroners, Clerks and other officers, within the said respective counties. And also shall award process for levying, as well of such fines, forfeitures and amerciaments, as shall be estreated into the said Supreme Court, as of the fines, forfeitures, and amerciaments, which shall be lost, taxed and set there, and not paid to the uses they are or shall be appropriated. And generally shall minister justice to all persons, and exercise the jurisdictions and powers hereby granted concerning all and singular the premises according to law, as fully and amply, to all intents and purposes whatsoever, as the Justices of the Court of King's Bench, Common Pleas, and Exchequer, at Westminster, or any of them, may or can do. [Saving to all and every person and persons, his, her or their heirs, executors and administrators, their right of appeal from the final sentence, judgment or decree of any court within this province, to his Majesty in Council, or to such court or courts, Judge or Judges, as by our sovereign lord the King, his heirs or

three weeks, and the third Monday in March, for two weeks, (chap. 1847.) [But see the closing note to the act in the text.]

(b) So much of this section as respects the Judges going the circuit, is repealed and supplied, (post. chap. 560, chap. 1564.)

successors, shall be appointed in Britain, to receive, hear and judge of appeals from his Majesty's Plantations.] (c) 1722.

[XIV. Provided the person appealing shall, upon entering his appeal in the court where the sentence, judgment or decree, shall be given in this province, pay all the costs before that time expended in the prosecution, or defending the said suit : And shall further enter into bond, with two good and sufficient securities, in the sum of three hundred pounds, to the defendant in the appeal, conditioned to prosecute the said appeal with effect, within the space of eighteen months after the entry of such appeal, and to satisfy the judgment of the court from which he appeals : And further, to pay all such costs and damages as shall be adjudged to him to pay, in case a sentence, judgment or decree, pass against the said appellant, or in case he, she, or they fail to prosecute their appeal with effect.] (d)

The appellant shall give bond in three hundred pounds, &c.

XV. And that there shall be a fit person, nominated by the Judges, and commissioned by the Governor, to be Prothonotary or Clerk of the said Supreme Court, who shall keep and duly attend his office at some convenient place in the city of Philadelphia, and may be suspended, punished or removed by the said court, for misdemeanors in his office. (e)

Governor to commissionate the Prothonotary of the Supreme Court.

XVI. And be it further enacted, That all the said writs shall be granted of course, and made in the name and style of the King, his heirs and successors, and shall bear test in the name of the Chief Justice, for the time being : But if he be plaintiff, or defendant, in the name of one of the other Justices, and shall be sealed with the judicial seal of the said court, and made returnable to the next court after the date of such writs. (f)

How the writs shall be granted and bear test.

XVII. Provided always, That none of the Judges of the said Supreme or Provincial Court shall sit judicially in any of the said Courts of Common Pleas, Quarter Sessions, or any other inferior court in this province.

No provincial Judge to sit in the inferior courts.

XVIII. And be it further enacted, That the said Judges of the Supreme Court shall have power, and are hereby authorized and empowered, from time to time, to deliver the gaols of all persons which now are or hereafter shall be committed for treasons, mur-

The said Judges to deliver the gaols of prisoners for treasons, murders, &c.

(c) For the jurisdiction of the Supreme Court, see the constitution ; the first note to the act in the text ; and the title *Judiciary Department*, in the index to this edition. For the law respecting fines, forfeitures, and amerciaments, see chap. 1051. The revolution of course destroyed the appeal to Great-Britain ; but for reviewing the final judgments of the Supreme Court, a writ of error lies to the High Court of Errors and Appeals, (chap. 1564.) [which court is now abolished, and no writ of error lies from the final decision of the Supreme Court, except, (in cases within its jurisdiction,) to the Supreme Court of the United States.]

likewise declared, that the plaintiff in error or appellant shall give security for prosecuting the writ or appeal, or on failure thereof, or in case of affirmation, to pay the condemnation money, with damages ; and that if the judgment or decree is reversed, each party shall pay his own costs.

(e) By the constitution, art. 2, the appointment of all the public officers, except in particular instances, is vested in the Governor ; and the Prothonotary of the Supreme Court has been, accordingly, appointed by him.

(f) The style of all process, (says the constitution,) shall be, "*The Commonwealth of Pennsylvania*," and shall be prosecuted and conclude, "*against the peace and dignity of the same*."

(d) See the preceding note. For the proceedings on writs of error and appeals, see chap. 1564, where it is



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ders, and such other crimes, as, by the laws of this province, now are or hereafter shall be made capital, or felonies of death as afore-said : And for that end from time to time to issue forth such necessary precepts and process, and force obedience thereto, as Justices of Assize, Justices of Oyer and Terminer, and of Gaol Delivery, may or can do in the realm of Great-Britain. (*g*)

Felonies committed in the out-parts of the province, to be tried in Philadelphia.

[XIX. And also, that all manner of offences already made or declared, or hereafter to be made or declared, to be capital or felonies of death, by any law or act of Assembly of this province, and done, perpetrated or committed, or hereafter to be done, perpetrated or committed, by any person or persons, within the bounds and limits of the same province, and without the certain and known bounds and limits of any of the counties now or hereafter erected in the said province, shall be from henceforth enquired of, heard and determined, before the said Judges, by good and lawful men of the city and county of Philadelphia, in like manner and form, to all intents and purposes, as if the said offences and felonies of death had been done, perpetrated and committed, within the said city or county of Philadelphia.] (*h*)

Fees in the Supreme Court.

[XX. *Provided always*, That the fees due to the Judges and officers of the said court, for hearing and determining any of the said capital offences, for any thing done there, shall be double the fees usually taken in the General Quarter Sessions held in any of the said counties in this province, any thing herein, or in any other law to the contrary notwithstanding.] (*i*)

County court to be held four times a year.

XXI. *And be it further enacted*, That a competent number of persons shall be commissioned by the Governor, or his Lieutenant, under the broad seal of this province, who shall hold and keep a Court of Record in every county, which shall be styled and called, The County Court of Common Pleas, and shall be holden four times in every year, at the places where the General Quarter Sessions shall be respectively kept, viz. At Philadelphia, for the county and city of Philadelphia, on the day called the first Wednesday after the day appointed for the Quarter Sessions to begin on there, in the months called March, June, September and December : At Bristol, for the county of Bucks, on the eleventh day following, inclusive : And at Chester, for the county of Chester, on the day called the last Tuesday in the months called May, August, November, and February. Which said Justices, or any three of them, according to the tenor and direction of their commissions, shall hold pleas of assizes, *scire facias*, replevins, and hear and determine all and

(*g*) By the constitution, the Judges of the Supreme Court, and of the Courts of Common Pleas, are, *ex officio*, Justices of Oyer and Terminer and General Gaol Delivery ; but no commission of Oyer and Terminer or Gaol Delivery, shall be issued, nor shall the Judges of the Common Pleas hold a Court of Oyer and Terminer and Gaol Delivery in any county, when the Judges of the Supreme Court, or any of them, shall be sitting in the same county. Art. 5 and 9.

(*h*) The whole territory of the state being now divided into counties, this section is become obsolete ; and, indeed, it seems to be incompatible with the principles of the existing government, agreeably to a legislative construction, (chap. 1157.)

(*i*) The Judges have fixed salaries ; and are prohibited from taking fees or perquisites by the constitution. For the existing fee bill, providing for judicial and other officers, see (chap. 1852.)

all manner of pleas, actions, suits and causes, civil, personal, real and mixed, according to the laws and constitutions of this province. (k) 1722.

XXII. *And be it further enacted*, That every of the said Justices shall and are hereby empowered to grant, under the seal of the respective counties, replevins, writs of partition, writs of view, and all other writs and process, upon the said pleas and actions, cognizable in the said respective courts, as occasion may require. (l)

Justices of the said court to grant replevins, &c.

XXIII. *And be it further enacted*, That the said Justices of the said respective courts shall and are hereby empowered to issue forth *subpœnas*, under their respective hands and seal of the counties, into any county or place of this province, for summoning or bringing any person or persons to give evidence in or upon the trial of any matter or cause whatsoever, depending before them, or any of them, under such pains and penalties, as, by the rules of the common law, and course and practice of the King's courts at Westminster, are usually appointed.

And issue 'subpœnas' for evidence in to any county.

XXIV. *And be it further enacted*, That upon any judgment obtained in any of the said courts of this province, and execution returned by the sheriff or coroner of the proper county, where such judgment was obtained, that the party is not to be found, or hath no lands or tenements, goods or chattels, in that county, and thereupon it is testified, that the party sculks, or lies hid, or hath lands, tenements, goods or chattels, in another county of this province, it shall and may be lawful to and for the court that issued out such execution, to grant, and they are hereby required to grant an *alias* execution, with a *testatum*, directed to the sheriff or coroner of the county or place, where such person lies hid, or where his lands or effects are, commanding him to execute the same, according to the tenor of such writ or writs, and make return thereof to the Court of Common Pleas where such recovery is had or judgment given. And if the sheriff or coroner, to whom such writ or writs shall be directed, shall refuse or neglect to execute and return the same accordingly, he shall be amerced in the court where he ought to return it, and be liable to the action of the party grieved: And the said amerciaments shall be truly and duly set, according to the quality of the offence, and estreated by the Prothonotaries of the respective Courts of Common Pleas of this province into the next succeeding Supreme or Provincial Court in course, that thence process may issue out against the offenders for levying of such fines and amerciaments as shall be unpaid, to the uses for which they are or shall be appropriated. (m)

An *alias* execution to be granted, directed to the Sheriff of another county.

(k) The constitution has superseded the organization of the Court of Common Pleas, as prescribed in this section. For the particulars, see the introductory note; and for the jurisdiction of the respective courts, see the title *Judiciary Department*, in the index to the present edition.

(l) Respecting writs of replevin, (see ante. chap. 139;) writs of attachment, (ante. chap. 142;) and writs of partition, (chap. 1740, sect. 22.)

(m) In a cause depending in the

Supreme Court, the *venue* was laid in Philadelphia county, and judgment being entered an execution was thereupon issued, immediately into Bucks county, but, after argument, the writ was quashed, the Judges declaring that in every such case, a *fieri facias* must be filed in the Supreme Court, with a return of *nulla bona*, and then a term must intervene before the *testatum* issues, in order to support the fiction. 1 Dallas, 330.



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The defendant may have a special court, in case of sudden departure.

**XXV.** *And be it further enacted,* That if any defendant or defendants in any suit or action, by reason of his or their sudden departure out of this province, shall require a more speedy determination in such action or suit, than can be obtained by the common or ordinary rules of proceedings in any of the said Courts of Common Pleas in this province, the said Justices, upon application to them made, shall grant to such defendant or defendants special courts, and shall proceed to hear and determine the premises, according to the course and practice of the said Courts of Common pleas, and for the usual fees therein taken. (*n*)

But shall give bail to the plaintiff's action.

**XXVI.** *Provided always,* That before the said Justices shall grant such special court, or proceed to hear and determine the premises, the defendant shall give bail to the plaintiff's action by recognizance, according to the course and practice of the said Court of Common Pleas.

Process on writs of enquiry regulated.

**XXVII.** And to prevent the excessive charges that have of late arisen upon executing writs of enquiry of damages, *Be it enacted,* That the Justices who give any interlocutory judgment shall, at the motion of the plaintiff, or his Attorney in the action where such judgment is given, make an order, in the nature of a writ of enquiry, to charge the jury attending at the same or next court, after such judgment is given, to enquire of the damages and costs sustained by the plaintiff in such action; which enquiry shall be made, and evidence given, in open court; and after the inquest consider thereof, they shall forthwith return their inquisition, under their hands and seals; whereupon the court may proceed to judgment, as upon inquisitions of that kind returned by the Sheriff. (*o*)

(*n*) By an act of the 10th day of April, 1782, (chap. 955;) the privilege of having a special court was extended to plaintiffs, as well as defendants, and to cases depending in the Supreme Court, as well as the Common Pleas; but was again taken from the plaintiffs by an act of the 27th of March, 1789, (chap. 1402.)

The Judges refused to grant a special court on the application of a plaintiff, before the return day of the writ, the defendant not being in court, nor the action depending for this purpose, till bail entered, or an appearance filed. 1 Dallas, 77.

On the dissolution of a partnership, one partner assigned all the effects and credits of the company to the other, who moved, as plaintiff, for a special court, as he was about to depart, though the other partner would remain here; but the court refused the motion, 1 Dallas, 169.

The act is intended for the benefit of every man, whether an inhabitant or a foreigner, who is about to leave the state; but where the application for a special court was made by the plaintiff, and the defendant was absent, the Judges, under the peculiar circumstan-

ces stated in the case refused to grant it. 1 Dallas, 267.

On a motion for a special court by the defendant, it was objected, that the act did not apply to cases where there were other partners, who could remain during the usual course of proceeding to defend the cause, and who did not join in the application; but the objection was over-ruled. *Ex parte Holker*: In the Supreme Court, July Term, 1790. [2 Dallas, 111.]

(*o*) The court will not set aside the verdict of juries of enquiry on frivolous grounds, nor examine the effects of any particular piece of evidence on the mind of the jury; for, unless it appears that there was no proper evidence, the court will presume that they had sufficient grounds for their inquest. 1 Dallas, 82.

After judgment by default, the defendant has a right to offer his evidence to the jury of enquiry, to combat the plaintiff's proof; and if the sheriff refuses to hear the evidence on both sides, the court will direct a new writ of enquiry. 1 Dallas, 377. But after a judgment in a foreign attachment, the defendant is not entitled to produce evi-



**XXVIII.** *And be it further enacted,* That there may be a competent number of persons of an honest disposition, and learned in the Law, admitted by the Justices of the said respective courts, to practise as attornies there, who shall behave themselves justly and faithfully in their practice : And if they misbehave themselves therein, they shall suffer such penalties and suspensions, as Attornies at law in Great-Britain are liable to in such cases ; by which Attornies actions may be entered, and writs, process, declarations, and other pleadings and records, in all such actions and suits, as they shall respectively be concerned to prosecute or defend from time to time, may be drawn, and with their names and proper hands signed : Which said Attornies so admitted may practise in all the courts of this province, without any further or other licence or admittance : And that the Attorney for the plaintiff in every action shall file his warrant of attorney in the Prothonotary's office the same court he declares : And the attorney for the defendant shall file his warrant of attorney the same court he appears : And if they neglect so to do, they shall have no fee allowed them in the bill of costs, nor be suffered to speak in the cause, until they file their warrants respectively. (*p*)

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Attornies  
may be ad-  
mitted :

How punish-  
ed for misbe-  
haviour.

Attornies to  
file their  
warrants of  
attorney.

Passed 22d May, 1722.—Recorded A. vol. II. page 297. (*q*)

dence before the jury of enquiry. *Ibid.*

There is nothing in the act of assembly, which precludes the Sheriff from holding an inquest on real estate taken in execution, after the return of the *feri facias*. 1 Dallas, 379. But an inquisition quashed for irregularity becomes a nullity, and leaves the case just as if none had been taken. *Ibid.*

(*p*) By the act of the 25th day of September, 1786, (chap. 1235,) the court is empowered to make rules for the government of its own practice ; and by the act of the 13th day of April, 1791, (chap. 1564,) the Judges of the Courts of Record therein mentioned, are excluded from practising as Counsellors or Attornies.

[*q*] It has been thought proper to retain the whole of this act, with the valuable and comprehensive summary and notes of the former editor. The present state of the judiciary, which has undergone various important alterations since those notes were first published, is exhibited in the following additional summary :

December 4th, 1807, an act was passed "to amend the several laws of this Commonwealth, relative to domestic attachments ;" and jurisdiction is given to Justices of the Peace and Aldermen, in all cases of attachment, where the demand does not exceed one hundred dollars, and all other acts altered or supplied by this act are repealed, (chap. 2873.) And by a supplement

passed April 4th, 1809, the *proviso* in the first section is repealed, and the oath to be administered on issuing the attachment, may be administered by the Prothonotary, or Justice of the Peace. And the trustees may be sworn before any Judge, Alderman, or Justice of the Peace.

Arbitrations and proceedings in Courts of Justice, are regulated by an act passed March 21st, 1806, (chap. 2686,) and a new form of summons in debt is directed, and a writ of ejectment formed, and the ancient fictitious mode of proceeding by ejectment is abolished. The plaintiff must file a statement of his demand in the Prothonotary's office in a certain time ; and the defendant, within a further given time, a statement of his defence. Amicable references may be entered into, and the form of proceeding prescribed. Suits shall not be set aside for informality, &c. but when such informality will, in the opinion of the Court, affect the merits of the cause, the plaintiff or defendant shall be permitted to amend, or alter, respectively, his declaration or plea, on or before the trial of the cause ; and if the adverse party be taken by surprise, the trial of the cause shall be postponed until the next court, &c. And the form of the juror's oath is altered. Amicable actions may be entered by Prothonotary, without the agency of an Attorney ; and in like manner, he may enter judgments. In all civil suits, the parties may be heard in person and



1722. by counsel. Attornies retaining their clients' monies to be struck off the rolls. A new form of writ of *capias* prescribed: all acts of Assembly to be strictly pursued, and nothing to be done agreeably to the provisions of the common law, in such cases, further than shall be necessary for carrying such act, or acts into effect.

By a supplement passed April 13th, 1807, (post. chap. 2872.) all parties having an undivided interest in lands, in any manner, may join in ejectment, and recover according to their title. Minors may sue by their guardians, as in other cases. Defendant may defend on his own title, or that of a third person; and the landlord, as heretofore, shall be admitted to defend, and in such case, on the trial, shall admit himself in possession.

On service of ejectments, if persons not named in the writ are in possession, the Sheriff shall add their names to the writ, and serve it on them, and the Prothonotary shall enter their names to the action, and they shall be parties thereto—and service by Sheriff, is made (*prima facie*,) evidence of the defendants being in actual possession.

Writs of ejectment shall not abate by the death of either party, &c.

Two verdicts and judgments on the same side in succession, to be conclusive, and bar the right.

No *ca. sa.* to issue where defendant has real or personal estate to satisfy plaintiff's demand; or if the whole cannot be satisfied, then only for the residue thereof.

On a *liberari facias*, the Sheriff, in certain cases, to deliver actual possession.

By a further supplement, passed March 28th, 1808, (post. chap. 2987,) in case of non-attendance of a competent number of Judges on the day appointed for holding a Court of Oyer and Terminer, in the city, or any county, any one Judge shall have power to adjourn said Court from day to day, &c. and any associate Judge may, in like manner, adjourn the Common Pleas and Sessions. The courts are also empowered to enforce by attachment the payment of monies had and received by Sheriffs, Coroners or Attornies, and the delivery by Attornies of all papers belonging to their clients.

Compulsory arbitrations are established and regulated by an act passed March 20th, 1810, which alters and supplies the act of March 29th, 1809. More extensive powers are given to the arbitrators; and all costs are to be paid, and, on appeal, to be recovered back on a certain event.

The act "for the recovery of debts

and demands not exceeding one hundred dollars, before a Justice of the Peace, and for the election of constables, &c." is amended and consolidated with its supplements, by an act passed March 20th, 1810, and all previous acts on that particular subject are repealed. Particular regulations are made with respect to set-offs before Justices. Entering transcripts with Prothonotary—and how executions shall, in such case, be issued. No judgment either of Court, or before a Justice, shall defeat a freeholder's privilege, longer than until it shall be satisfied.

By consent of parties, Justices may take cognizance of demands exceeding one hundred dollars, and proceed to judgment and execution; and the penalty in case of fraudulent judgments is prescribed.

Justices have power to compel defalcation in all cases of rent, not exceeding one hundred dollars, &c.

In what manner *certioraris* shall issue, prescribed; and a former law repealed.

Justices have jurisdiction in cases of executors, with certain restrictions in case of an allegation of an insufficiency of assets.

Jurisdiction of Justices in case of damage by trespass. March 1st, 1799. (post. chap. 2012). Revived and made perpetual, by the act of January 2d, 1804. (post. chap. 2390). regulated by act of 21st March, 1806. (post. chap. 2684). extended to 50 dollars by act of April 13th, 1807. (post. chap. 2859).

Their powers in cases of assault and battery, so as to affect compromises, in certain cases, regulated by act of March 17th, 1806. (post. chap. 2671).

An act for laying out, making, and keeping in repair the public roads and highways, &c. and for laying out private roads, was passed April 6th, 1802. (post. chap. 2287) and all previous acts, (except as to the city of Philadelphia, and other corporate towns, and any special laws for the county of Philadelphia), are repealed. See supplement to this act, chap. 2058, and an act passed April 3d, 1809, and the 4th section of the act of March 28th, 1808, giving power to the Courts of Sessions to enforce the road act.

With respect to juries—an act was passed (but limited to 3 years) directing the mode of selecting and returning them, on the 29th of March, 1805, (post. chap. 2577). By which act, the Jurors are to be selected annually by the County Commissioners and the Sheriff, and the names put into wheels and ballotted for, &c. and the Jurors are to be paid one dollar for each day's attend-



ance—and by a supplement, passed April 4th, 1807, (post. chap. 2797), the assessors were required to return the names of all the white inhabitants of their respective wards or townships, of competent ability, triennially, (or oftener, if the wheels should be exhausted) to the Commissioners, who were to deposit them in the wheels, &c. But this system was repealed, and the act of March, 1805, was revived and made perpetual, by an act passed April 4th, 1809—which latter act allows each party in civil suits, to challenge two Jurors peremptorily; and the defendant, in criminal cases, where challenges have not heretofore been allowed, four Jurors peremptorily.

The power to grant divorces, &c. is extended to the Courts of Common Pleas, by an act passed April 2d, 1804, (post. chap. 2483).

The Alderman's Court in the city of Philadelphia, is abolished by the 30th section of the act of March 20th, 1810.

By an act concerning libels, passed March 16th, 1809, (and limited to three years, &c.) no person shall be prosecuted by indictment, for the publication of papers, examining the proceedings of the Legislature, or any branch of Government, or for investigating the official conduct of officers, or men in public capacity. And in all actions, or criminal prosecutions of a libel, the truth may be pleaded in justification, or given in evidence.

An act concerning writs of partition, passed April 11th, 1799. (post. chap. 2379). But much thereof is repealed by the act of March 28th, 1806, (post. chap. 2688,) and jurisdiction therein given to the Common Pleas. And see an act supplementary to the several acts concerning partitions passed April 7th, 1807. (post. chap. 2813,) which is amended by the act of March 26th, 1808. (post. chap. 2965).

In what manner Sheriffs and Coroners to give security; and how writs of *Distringas* shall issue, and issues be levied. See the act of March 28th, 1803. (post. 2355).

And in what manner writs of *Estrepement* may issue to prevent waste, see the act of April 2d, 1803. (post. chap. 2378).

The courts have also been very considerably altered.

The Courts of *Nisi Prius* in the several counties, except *Philadelphia*, are abolished, and a new Court of Record, styled a *Circuit Court*, was established by an act passed March 20th, 1799. (chap. 2021). and the times of holding them were to be prescribed at the *December* and *March* terms, annually. Ap-

peals were to be sustained by the court from the Register's and Orphans' Courts in the several counties, except *Philadelphia*; and the Justices of the said court (who were the Judges of the Supreme Court) had power to issue writs of *Certiorari*, *Habeas Corpus*, and all other remedial writs and process, grantable by the said Justices by virtue of their offices, excepting writs of Error and *Certiorari* after judgment, orders or decrees given or obtained, to be returnable into the office of clerk of the said court. Each of the said courts to have a seal, &c. The Judges, whilst holding said court, to give judgment, pass decrees, and award executions, and generally, to exercise similar powers, in cases of which they had jurisdiction, in as ample a manner as if sitting in bank. Also to try and pass judgment and award execution, in all criminal cases, on indictments removed to that court, though not sitting as a court of *oyer* and *terminer*, and without any new indictment.

An appeal lay from the judgment of the Circuit Court, to the Supreme Court, under certain restrictions and conditions; and after the decision of the Supreme Court, the record was to be remitted back to the Circuit Court to be there carried into execution and effect. The act also declared, that the record itself, and not barely a transcript, should be removed by *Habeas Corpus*, as on a *Certiorari*—but no removal after the cause was at issue one term below. Recognizances of bail, and all other entries and proceedings were removed by those writs to the Circuit Court, and to have the same operation and effect as they might have had, if the cause, or indictment had not been removed. The Prothonotaries of the Common Pleas, respectively, to be clerks of the Circuit Court. The Courts of *Nisi Prius* in the county of Philadelphia, are preserved by the 12th section.

The 14th section is still in force, and provides, that no judgment rendered in the Supreme Court, shall be a lien on real estates, excepting in the county in which such judgment is rendered. And a *testatum* execution shall be a lien on lands and tenements, only from the time of delivery thereof to the Sheriff.

By an act to "alter the Judiciary System of this Commonwealth," the following important arrangements were made, Feb'y 24th, 1806. (post. chap. 2634).

SECT. 1. No issues in fact, in the Supreme Court, to be tried in bank, but at Courts of *Nisi Prius* to be held in the city of Philadelphia, in the manner heretofore used, &c. and one of the



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Judges may hold sittings for the trials of issues in fact, in term time, without regard to the sittings of the Judges then in bank, with like powers and authority as a Judge at *Nisi Prius*.

SECT. 2, divides the state into two Districts of the Supreme Court—one to be called the Western District, and to consist of the counties of Bedford, Somerset, Westmoreland, Fayette, Greene, Washington, Allegheny, Beaver, Butler, Mercer, Crawford, Erie, Warren, Venango, Armstrong, Cambria, Indiana, Jefferson, Clearfield, and McKean; and the other to consist of the remaining part of the state, and to be called the Eastern District.

SECT. 3, directs a Prothonotary to be appointed for each District.

SECT. 4, establishes one term annually, for the Western District at *Pittsburg*, on the first Monday in September; to continue two weeks, if necessary, and adjourned courts to be held whenever the business therein depending may render it necessary. And two terms annually at *Philadelphia*, for the Eastern District, on the second Monday in December, to continue three weeks, and on the third Monday in March, to continue two weeks, if necessary; and adjourned courts to be held, whenever the business therein depending may render it necessary.

SECT. 5, declares the powers of these courts to be the same as are vested by the constitution and laws in the Supreme Court of the State.

SECT. 6, 7, and 8, consist of temporary arrangements to carry the act into effect, and renders the new Prothonotaries accountable to the former one, and to others, for antecedent fees and costs.

SECT. 9. Circuit Courts to be held only by one Judge, at least once in every year, in each county, except *Philadelphia*, where causes are at issue and undetermined in said court, &c.

SECT. 10. The Judges in the Circuit Court, so to alternate, that the same Judge shall not sit oftener than once in the same county in every fourth successive term of said court, unless rendered impracticable by accident.

SECT. 11, abolishes the High Court of Errors and Appeals, after a limited time; and all its records are transferred to the office of the Prothonotary of the Eastern District, who is authorized to make certified copies thereof. And although the powers of this court were partially continued to a further period by a subsequent act, it is now entirely extinguished.

SECT. 12, organizes the Courts of Common Pleas in Districts; to wit:

1. District. City and County of Philadelphia.
2. Lancaster, York, and Dauphin.
3. Berks, Northampton, and Wayne.
4. Mifflin, Centre, Huntingdon, and Bedford.
5. Beaver, Allegheny, Washington, Fayette, and Greene.
6. Mercer, Butler, Venango, Crawford, and Erie.
7. Delaware, Chester, Bucks and Montgomery.
8. Northumberland, Luzerne, and Lycoming.
9. Adams, Cumberland, and Franklin.
10. Somerset, Cambria, Indiana, Armstrong, and Westmoreland.

SECT. 13. The Governor to appoint a President in each of the new districts, viz. 7th, 8th, 9th, and 10th, with a salary to each of \$ 1600, annually.

SECT. 14. The President alone, is authorized to hold the Courts of Common Pleas.

SECT. 15. No vacancy in the office of Associate Judge of the Common Pleas, to be supplied in any county, unless the number of associates shall be reduced to less than two—when that number shall be completed.

SECT. 16. Four terms to be held annually in each county—in certain counties, each term to continue two weeks, and in such counties, the trials in the Common Pleas to be on the second week.

SECT. 17, and 18, prescribe the mode of selecting, summoning, and returning jurors to said Courts.

SECT. 19th, takes away the original jurisdiction of the Supreme Court in civil causes; and prohibits the removal of civil causes to the Supreme Court, or Circuit Court, unless the value in controversy between the parties, shall exceed the sum of one thousand dollars, if removed from the Common Pleas of the first district, and five hundred dollars, if removed from the Common Pleas of any other district. And, sect. 20, prescribes the conditions on which removals shall take place.

SECT. 21, empowers the Judges of the Common Pleas in counties in which the term is extended to two weeks, to shorten the term, by a special order, directing the ensuing term to be held but one week.

SECT. 22. The Judges of the Common Pleas are authorized to hold adjourned Courts, as they shall think proper, and at such adjourned Courts, to



act and decide upon all business within their jurisdiction respectively. And it is made the duty of the Judges of the Supreme Court, and of the Common Pleas, to see that all actions in their respective Courts shall be reached, and have a fair opportunity of trial, at least within one year after they shall have been commenced; and a neglect of the duties enjoined upon them by this act, shall be deemed a misbehaviour in office, and lay a sufficient ground for the removal of the Judge, or Judges, so offending.

SECT. 23 and 24, re-establish the Register's and Orphans' Courts, and declare their powers, in the same manner as they are established by the existing constitution, and former act founded thereon. But a new provision is introduced into the 23d section, by which the Orphans' Courts in the first district, are to be held at such times as the Judges may think proper. And in every county in the other districts, where the term is to continue two weeks, the Orphans' Courts shall be held on the first week of the term, and at such other times as they may think proper. In term time, the President is to be a component part of the Orphans' Court. And in each of the other counties, the Judges of the Common Pleas, or any two of them, *the President being one*, shall hold the Orphans' Courts, at such times as they may think proper: But any two judges in each county, may hold the Orphans' Courts in said county, for the appointment of guardians, and for the transacting, hearing, and deciding upon any business in the Orphans' Court; but if any person interested in the business then before the Court, shall request the same to be continued until the President can attend, in that case the business *shall be continued* accordingly.

SECT. 25. In all cases in which the Judges of the Supreme Court, &c. or Presidents of the Common Pleas shall deliver the opinion of the Court, if either party, by himself or council, require it, the said Judges, respectively, shall reduce the opinion so given, with their reasons therefor, to writing, and file the same of record in the cause.

SECT. 26, fixes the times of holding the several County Courts. In some instances these times have been altered by subsequent laws; and the stated terms in each county will be found under the several acts establishing and organizing the respective counties.

SECT. 27. The prothonotary is to furnish annually to the accounting officers, an account of fees received in his office; and the yearly amount received beyond

\$ 1500, is made subject to a certain tax. And by

SECT. 28, the Prothonotaries are empowered to enter judgments, on confession, or by warrant, without the agency of an Attorney, or declaration filed, &c.

Again, on the 10th of April, 1807, (post. chap. 2846,) an act passed, "erecting a middle district of the Supreme Court."

This district was made to consist of the counties of York, Adams, Dauphin, Cumberland, Franklin, Huntingdon, Mifflin, Northumberland, Luzerne, Lycoming, Centre, Clearfield, M'Kean, Potter, and Tioga. And one term is to be held annually therein at Sunbury in the county of Northumberland, (then) on the first Monday in *July*. And the Supreme Court of this district is vested with the same powers as the other districts.

Alterations still more important were made by "a further supplement to an act entitled "an act to alter the judiciary system of this commonwealth," passed March 11th, 1809.

By this act, two additional districts are added to the Supreme Court: one to be called the Lancaster district, to be composed of the counties of Lancaster, York, Berks, and Dauphin. And the term therein is to be held at Lancaster, annually, on the third Monday in May; and the other to be called the Southern district, to be composed of the counties of Cumberland, Bedford, Franklin, Huntingdon, and Adams. And the term therein is to be held annually at Chambersburg, on the Monday week next following the end of the second week of the term of the Western district. Each term to continue two weeks, if necessary, and adjourned Courts to be held if necessary, and the term of the middle district is to commence on the Wednesday next following the end of the second week of the term of the Lancaster district. The Judges are invested with the same powers in the new, as in the other districts.

As soon as the Judges of the proper district of the Supreme Court shall have finally determined and rendered judgment in any action, &c. they shall order the records thereof, with their decision and determination thereon written and duly certified to be remitted to the appropriate court of the proper county, to be by such court duly carried into execution and effect, &c.

The Circuit Courts are abolished, and all causes, indictments and prosecutions therein pending and undetermined, are transferred to the appropriate County



1722. Court from which they were removed, there to be tried and determined. And appeals depending in said Circuit Court are transferred to the Supreme Court of the proper district for final determination. Courts of *Nisi Prius* to be held in the city and county of Philadelphia, as heretofore.

On appeals and writ of error to the Supreme Court, the party taking the same, must make oath or affirmation, to be filed with the record, that the same is not intended for delay: and where facts in any special verdict may be insufficiently found, the Judges may remand the record, and direct another trial—and that every party may have an opportunity to take a writ of error, no execution shall issue upon any judgment, on special verdict, demurrer, or case stated, unless by leave of the Court, in special cases, for security of the demand, within three weeks from the day on which such judgment shall be pronounced.

All recognizances of bail or other surety or security required by law to be entered into or given for the prosecution of any appeal or writ of error, may be taken by or before any Judge of the Court from whose judgment or decree, the same shall be taken or issued, and be certified and transmitted with the record; and may be sued upon in the Court of Common Pleas of the proper county or elsewhere, if the defendant shall not reside in such county.

Upon a vacancy, the Supreme Court hereafter to consist of but three Judges. There are now, in consequence of a vacancy, but three Judges in that Court.

Indictments in the Mayor's Court, may, at the sessions in which they are found, be removed to the Quarter Sessions of Philadelphia, for trial.

Finally, by another supplement to the act of February 24th, 1806, passed March 20th, 1810, the original jurisdiction of the Supreme Court, within the city and county of Philadelphia, is restored as to all controversies of the value of five hundred dollars and upwards, and removals may take place from the Common Pleas, in controversies of the same value; and Courts of *Nisi Prius* are to be held by the Judges severally, in order and rotation, at least 33 weeks in each and every year, hereafter, if necessary to do the business—and the fees in the Supreme Court are to be the same, as in the Court of Common Pleas.

And by another act, passed the same day, the Judges of the Supreme Court, are authorized to establish return days, in the respective Courts in bank.

How *certioraris* shall issue to Justices, and the manner of proceeding thereon, see the 21st, 22d, 23d, 24th, and 25th

sections of the consolidating act of March 20th, 1810.

Bills of exceptions are grounded on the English statute of Westminster 2d 13 Edward 1. stat. 1. chap. 31. But the use of them is now greatly superseded in practice, by the 25th section of the act of February 24th, 1806. By which, at the desire of the party, the opinion of the Judge may be annexed to the record—without the formality of tendering a bill of exceptions.

By an act passed April 3d, 1809, The power of the several Courts to issue attachments and inflict summary punishments for contempts of Court, is restricted and regulated. Contempts out of Court are to be punished by indictment. This act is limited to two years, &c.

The following is the arrangement of the Districts of the Supreme Court.

#### *Eastern District.*

Philadelphia, Bucks, Chester, Northampton, Montgomery, Delaware, and Wayne.

#### *Lancaster District.*

Lancaster, Berks, York, and Dauphin.

#### *Middle District.*

Northumberland, Luzerne, Lycoming, Mifflin, Centre, Clearfield, Mc. Kean, Potter, and Tioga. And the counties of Ontario and Susquehanna are since erected within its boundaries, but are not yet organized.

#### *Southern District.*

Cumberland, Bedford, Franklin, Huntingdon, and Adams.

#### *Western District.*

Somerset, Westmoreland, Fayette, Greene, Washington, Allegheny, Beaver, Butler, Mercer, Crawford, Erie, Warren, Venango, Armstrong, Cambria; Indiana, and Jefferson.

### MISCELLANEOUS NOTES, OF THE PRACTICE OF COURTS.

It is questionable whether the Court can issue writs of attachment for not obeying a *subpœna*, into another county. 2 Dallas, 45. (See sect. 8 and 23, of the act in the text.)

In what cases the Court will continue a cause, if witnesses, or even parties do not attend, and grant a rule for taking depositions *bene esse*. 2 Dallas, 45, 94, 108-9, 383.

It seems to have been admitted, that the Sheriff cannot be compelled to serve a *subpœna* out of his jurisdiction: And in a criminal case, the Attorney General applied for a special messenger, observing, that if, as in England, the Judges were attended by *tipstaves*, those would be the proper officers to employ on the occasion. But the Court



recommended that he should consult with the Sheriff, on a proper person to be hired for the special purpose. *Res-publica v. St. Clair*, 2 Dallas, 101.

The defendant moved to put off a trial on an *affidavit*, that an attorney of the Court was a material witness. He had not been *subpana'd*, but had promised the defendant to attend, and had left town a few days ago. Under these circumstances, the Court did not think a *subpana* necessary to entitle the defendant to put off the trial. *White v. Lynch*, 2 Dallas, 183.

What is considered by the practice of the Circuit Court of the United States, as a reasonable time of serving a *subpana*, and to move for an attachment, see 2 Dallas, 333-4.

*In what cases the Court will grant, or refuse new trials.*

*Shippen* J. New trials are frequently necessary for the purpose of obtaining complete Justice; but the important right of trial by Jury requires that they should never be granted without solid and substantial reasons; otherwise the province of Jurymen might be often transferred to the Judges, and they, instead of the Jury, would become the real triers of the facts. A reasonable doubt, barely, that justice has not been done, especially in cases where the value or importance of the cause is not great, appears to me, to be too slender a ground for them. But whenever it appears with a reasonable certainty, that actual and manifest injustice is done, or that the Jury have proceeded on an evident mistake, either in point of law, or fact, or contrary to strong evidence, or have grossly misbehaved themselves, or given extravagant damages; the Court will always give an opportunity, by a new trial, of rectifying the mistakes of the former Jury, and of doing complete Justice to the parties. 2 Dallas, 55-6.

*McKean, C. J.* (in delivering the opinion of the Court.) A motion for a new trial should not be made, after a motion in arrest of Judgment, unless in cases where the party had no knowledge of the fact, at the time of moving in arrest of judgment. For by moving in arrest of judgment, you tacitly admit the verdict is good. 2 Salk. 647. Bull. N. P. 326, 1 Burr. 334. This is also settled by the 32d printed rule of this Court; by which it is ordered, that no motion for a new trial shall be made, after a motion in arrest of Judgment. 2 Dallas, 121.

There must be notice given, according to the rules of Court, of a motion for a new trial, or the motion will be refused. 2 Dallas, 150. 1 Binney, 458.

New trial for defendant, granted in a capital case, by the Circuit Court of the United States. 3 Dallas, 515.

And see 4 Dallas 112, 315. And in *Walker v. Smith*, in the Circuit Court of the United States, on a motion for a new trial, because the verdict was against law, evidence, and the charge of the court, it was observed by *Washington J.* that although he was not satisfied with the verdict, nor should have assented to it as a Juror; yet the question of damages, or of interest in the nature of damages, belonged so peculiarly to the Jury, that he could not allow himself to invade their province, while he felt a determination to prevent on their part, any invasion of the judicial province of the court. *Ibid.* 391.

The day on which the verdict is given, is computed as one of the four days which are allowed to move for a new trial. 1 Binney, 292.

In civil cases, it must be an exceedingly clear error, that should induce the court to interfere, after the four days have expired without a motion for a new trial. See 1 Binney, 456.

*The following notes on this head, are from MSS. cases in the Supreme Court.*

New trial granted in ejectment, where the verdict was given for the defendant, against law, and the direction of the court.

The court will not grant a new trial, because the Jury have exceeded legal interest in the measure of damages for delaying the payment of money, unless it be excessive.

Where a fact has been submitted to a Jury, on a variety of evidence, the court will not grant a new trial, especially where there has been a view, in ejectment.

On a feigned issue to try the validity of a will, the court before whom it is tried, but not the Register, has power to award a new trial.

The Jurors are the constitutional Judges of the credit of witnesses; and if the sanity of a testator is fairly left to them, the court will not interpose, where they have discovered no leaning.

Though a Jury give liberal damages in *assumpsit*, for services performed, yet if they are not outrageous, the court will not order a new trial.

The mistake of a party, or his counsel, is no ground for a new trial.

A new trial refused to be granted, where a brother-in-law of one of the plaintiffs was sworn on the Jury; and the plaintiff's attorney being informed of it offered to waive the Juror, provided the defendant would consent to swear another in his room, and go on



1722. with the trial; no injustice having been done by the verdict.

It is no ground for a new trial, that the Judge who tried the cause inclined that the weight of evidence was with the plaintiff, and the Jury found a verdict for the defendant. For, where the matter of fact has been left to the decision of the Jury, the court will not grant a new trial.

Nor where a juror has betted on both sides of the cause, unless it produced an evident bias on his mind.

Nor where some of the jurors have expressed their sentiments *on the opening of the cause*.

The proof of the jurors eating and drinking at the expense of the party for whom the verdict has gone, must be clear and full, and must establish undue management, or criminal intention in the party, before the verdict will be set aside.

On a motion for a new trial, the party must be confined to the grounds stated in his written notice.

Where a jury has given a verdict, manifestly and grossly wrong, the court will grant a new trial, though they give no charge to the jury.

New trial ordered because the jury received new evidence, after leaving the bar.

Where a party delivers a paper to the jury, without consent or leave of the court, and a verdict is found for him, a new trial shall be awarded.

No new trial will be granted, where justice has been done, on a technical objection to the form of action.

For the court will not grant a new trial, unless they are satisfied injustice has been done.

A second new trial awarded, after a trial by a special jury and view, without costs; improper evidence, which was afterwards overruled by the court, having been disclosed to the jury on the view. (*Stewart's Lessee v. Richardson*. Circuit Court, Huntingdon.)

A tales man sworn on the jury, after being struck off the list of special jurors, is no ground for awarding a new trial. (Supreme Court.)

Where the weight of evidence preponderates against a verdict, a new trial will be granted. (See 1 Binney, 403-4.)

A new trial will not be granted, where the motion is founded on the discovery of evidence, which it was the fault of the party that he did not produce at the trial.

Though severe damages be found against the Sheriff, where the conduct of his deputy has been wantonly injurious, the court will not grant a new

trial, on the principle of public safety. (See this case reported. 1 Binney, 240.)

Though a Judge on the trial should declare, that the evidence did not support the action, it is no ground for a new trial, unless he persists in that opinion.

Where an agreed line is to be ascertained, the Court will not readily grant a new trial, after a view by the jury.

Where an ejectment has been brought to enforce the execution of a contract, on a sale of lands, and the jury have found for the defendant, the Court will not award a new trial, unless in a perfectly clear case.

#### *Of the postponement of trials.*

The defendant's counsel produced a certificate from a physician, stating that the defendant had been dangerously ill for three weeks last past; and thereupon moved to put off the trial.

But the Court held this to be no good cause for putting off the trial. And,

By *Shippen, J.* If there had been an *affidavit*, stating that there were material witnesses, who had not been summoned in consequence of this sickness; or if the plaintiff himself were a witness to prove books, or the like; that might have weight with the Court; as it is, the trial must proceed. *Jones v. Little*. 2 Dallas, 182.

The plaintiff's counsel, who was to have argued the case in the Supreme Court of the United States, died shortly before the time the argument was expected to come on—On motion to postpone, which was opposed, the court said, "In all questions of this nature, we must be governed by a sound discretion; in order to prevent, on the one hand, an unnecessary procrastination, and on the other hand, to avoid an injurious precipitation of trials. In the present instance, we think there is a sufficient foundation laid before us, to justify our granting a continuance till next term. If the cause were now to be taken up, it must be heard and decided *ex parte*. It is true, that counsel might, even at this time, be employed, so as to admit, perhaps, of an argument before the court rises; but it is reasonable that in a cause of magnitude, the counsel should have an opportunity, to investigate the principles, and consider the authorities connected with it, out of term and unincumbered by the pressure of the current business of the court. *Hunter v. Fairfax*. 3 Dallas, 305.

A trial will not be ordered on, where a party has not prepared, expecting a compromise from the declarations of his adversary. *Cornogg v. Cornogg's executors*. *Nisi Prius*, Chester, May, 1791. MSS. Reports.



Trial postponed, where there had been a late discovery of a material witness, in another state. The discovery was too late to enable the party to apply for a commission to procure the evidence; and the witness had promised to attend, but was prevented by sickness in his family. *Campbell's Lessee v. Sproat. Lancaster, Nisi Prius, May, 1791. MSS. Reports.*

*Of the rule for trial, or non pros. or by proviso.*

This cause being marked for trial, it was continued by the plaintiff; whereupon defendant's counsel moved for a rule to try at next term, or *non pros.*—This was opposed on the ground, that there was no default in plaintiff, as the delay arose, in fact, from the absence of a material witness, and the late arrival of a record from *New Jersey*, which was so imperfectly exemplified, that it could not be offered in evidence. To this it was answered, that there had been no *subpœna* taken out for the absent witness; and that as the action had been depending for more than two years, there was evidently a *laches* in not obtaining the exemplification sooner.

*By the Court.* It is certainly a great default that an earlier application was not made for the exemplification; and that instructions were not given to some person, to see that it was regularly made out. On that ground alone, therefore, the motion must be granted. But even if the plaintiff had not been guilty of a *laches*; if it was a misfortune, and not negligence, that had prevented the seasonable arrival of the record, we should still doubt the propriety of refusing the rule. *Todd v. Thompson. 2 Dallas, 105. See 1 Dallas, 251.*

The defendant had, at a former term obtained a rule to try, or *non pros.* At the next term, defendant's counsel, not recollecting this, desired the plaintiff to continue the cause, which he agreed to, and the continuance was entered; but immediately after, discovering that he had a rule on the plaintiff, he acquainted the opposite counsel, and gave notice that he should insist upon the rule. The plaintiff insisted that the entry of the continuance was conclusive.

*By the Court.* Such an entry cannot be conclusive. This is a mere mistake; and as it was immediately discovered, and notice given, no inconvenience arose from it. If the plaintiff had suffered any thing by it, it might have been another matter—but here he could suffer nothing. If he was ready for trial when the entry was made, he must be ready when the mistake was notified to him. *Nesbit v. Pope. 2 Dallas, 143.*

This was an action on an official bond executed by the defendant; and the real plaintiff having neglected to strike a jury, the defendant's counsel moved for a rule for trial by *proviso*; but on a suggestion from the attorney general, approved by the court, that such a rule could not be granted against the commonwealth, the motion was made for a peremptory rule to try at the next term; under which, the court said, they would order the jury to be qualified. *Respublica v. Coates. 2 Dallas, 109.*

If an issue is joined, and the defendant submits to a rule for trial or *non pros.* before the declaration is filed, he cannot elude the operation of the rule at a subsequent term. *2 Dallas, 156.*

A *non pros.* entered on a mistaken presumption, that a rule had been obtained to try, or *non pros.* was taken off, on entering a rule to try, or *non pros.* as of the last term, so that it might operate at the present term, should the trial be postponed by the plaintiff's *laches.* *2 Dallas, 266.*

On a rule for trial, or *non pros.* the *non pros.* must be moved for in court; it cannot be signed in the Prothonotary's office. *1 Dallas, 347.*

Rule for trial or *non pros.*: but afterwards a plea added, and particular facts referred. By this, the rule is virtually vacated. *1 Dallas, 405.*

Rule for trial or *non pros.* in September term; and notice at bar, when the cause was continued generally till January term: held, that the rule for trial or *non pros.* was continued, and that no new notice was necessary. *1 Dallas, 410.*

But where a rule for trial or *non pros.* has been entered several years, defendant is bound to give reasonable notice of his intention to proceed under his rule. *Wallace v. Boyd. Circuit Court, Lancaster, April, 1800. MSS. Reports.*

The court will not direct a nonsuit to be entered against the plaintiff's consent. *MSS. Reports. Circuit Court.*

See chap. 556.

*Of Depositions and Commissions.*

On *Affidavit*, that material witnesses for defendant, (who was in confinement) were about to leave the state, the court granted a rule to take their depositions, though the writ was not returnable till next term. *1 Dallas, 164.*—Granted *de bene esse*, subject to the opinion of the court. *Ibid. 251. See 2 Dallas, 78.*

What is a good, or defective execution and return of a commission to examine witnesses abroad. *See 2 Dallas, 143-4, 157, 192.*

The Supreme Court of the United States will not award a commission to

1722.



1722. examine witnesses till the commissioners are named. 2 Dallas, 401.

A joint commission to four persons to take depositions, cannot be executed by three. 4 Dallas, 410.

Want of jurisdiction may be taken advantage of in any stage of the cause. See 1 Binney, 138.

Under the plea of payment, mistake, or want of consideration may be given in evidence. The court said, there being no Court of Chancery here, this was necessary, in order to prevent a failure of justice. 1 Dallas, 17, 260.

It has been the settled practice of the Supreme Court to proceed upon equitable principles. See 1 Binney, 217.

In this state, says *C. J. McKean*, The Judges are sworn "to do equal right and justice to all men, to the best of their judgment and abilities, according to law." There is no Court of Chancery. The Judges here are, therefore, to determine causes according to equity, as well as the positive law: *Equity* being a part of the law. 1 Dallas, 213. See 4 Dallas, 245, 347-8.

## CHAPTER CCLX.

### *An ACT for regulating the gauging of Cask in this province.*

**WHEREAS** great abuses are daily committed in the trade of this province, by importing wine, rum, and other liquid merchandizes, in disproportionable cask, which have been usually gauged by the diagonal, which is known not to be an exact rule to find the contents of a disproportionable cask; and the person selling such commodities commonly refusing to submit to any other method or rule of gauging, the purchaser is thereby imposed upon, and often suffers great loss in want of just measure: For the redress of which abuse for the future within this province, *Be it enacted*, That if any merchant, or other person whatsoever, shall utter, sell, or put to sale, any butt, tun, pipe, hogshead, barrel, runlet, or other cask of rum, wine, molasses, or other liquid merchandize, imported into any port or place within this province, before the gaugers hereafter mentioned, or their deputies, shall have first plainly and truly set down or marked, upon the head of such vessel, the capacity and full contents of the same, according to the standard and excise of wine-measure by the gallon, such person or persons, shall forfeit, for the uses directed in this act, the sum of ten pounds for every cask so uttered, sold, or put to sale.

**II.** And further, if any merchant or other person shall utter, sell, or put to sale, any rum, wine, molasses, or other liquid merchandize, as aforesaid, within any port or place of this province, in any cask or vessel, having the number of gallons set down and marked on the head of such vessel, and the same shall be found to lack of the contents marked on the said vessel, such person shall forfeit and pay, to the uses directed in this act, the sum of ten shillings, for every gallon marked or numbered on the said cask more than it will truly contain.

**III.** And to the end that all persons, dealing in such merchandize, may the more easily and readily be informed and assisted in the discovering the true quantity of such liquid merchandize, so imported as aforesaid, *Be it enacted*, That Nathaniel Griffiths, and Benjamin Morgan, of Philadelphia, shall be and are hereby appointed gaugers, of all the wine, rum, molasses, and other liquid merchandize, imported into this province for sale. Which said gaugers, (before they enter upon their office, shall take an oath or affirmation, well and truly to execute the office of gaugers within

No person to sell liquors before gauged by the gaugers, under penalties, &c.

Forfeitures on liquors lacking the quantity sold for.

Gaugers names, and

how to be qualified.



this province between buyer and seller) are hereby empowered, by themselves, or their proper deputies, or assistants, to gauge all rum, wine, molasses, or other liquid merchandize, imported in any butt, tun, pipe or hogshead, barrel, runlet, or other cask, into any port or place of this province, when they the said gaugers, or either of them, shall be thereunto required. (\*) 1723.

IV. And that they shall mark or set down the true number of gallons, according to the English standard and excise of wine measure, which each cask or vessel will truly contain, with their own mark: All which casks, with their true marks and numbers, and owners names, shall be entered in a book or books, to be kept for that purpose by the said gaugers, or their proper deputies, to which recourse may be had, as occasion may require; for a copy of which entry, they shall receive four pence; and for each cask, so by them gauged and marked, they shall receive the sum of four pence, and no more. Gaugers to mark the cask with the contents, and enter it in a book.  
Fee for a copy and for gauging.

V. And if any cask or other vessel, gauged and marked by the said gaugers, or their lawful deputies, shall be found lacking one or more gallons of the quantity numbered or marked on the said cask or vessel, the aforesaid gaugers shall forfeit ten shillings, for each gallon lacking or exceeding the number or mark so set down on each cask. Penalty on false gauging.

VI. *And be it further enacted*, That all and every the penalties and forfeitures in and by this act set and appointed shall be, one half to the Governor, for the support of government, and the other half to the informer, or him or them that will sue for the same; if under forty shillings, to be recovered as debts under forty shillings are usually recovered; and if above forty shillings, to be sued for and recovered by bill, plaint or information, in any Court of Record within this province, wherein no essoin, protection, or wager of law, shall be allowed for the defendant. How the penalty shall be appropriated and recovered.

Passed 22d May, 1722.—Recorded A. vol. II. page 222. (r)

(r) By an act of the 18th of August, 1727. (post. chap. 295,) more effectual measures are taken to prevent unfair practices in packing Beef and Pork for exportation; which act is revised, and, in a great degree, supplied by supplements of the 12th of March, and 24th of September, 1789. (post. chap. 1384—1428.)

These two last acts prescribe the dimensions, make, quality, capacity, brand marks, and inspections of casks, &c. for packing Beef and Pork, Flaxseed, Butter, and Biscuit.

An act for the inspection of Butter intended for exportation, was passed January 7th, 1804. (post. chap. 2391), by which the dimensions and quality of the kegs are prescribed, and also the manner of inspecting and marking them; and the 9th section of the act of March 12th, 1789, is repealed.

Respecting the inspection of Bread and Flour, see the act of April 5th,

1781, (post. chap. 925), and the notes thereto subjoined. And the act of December 28th, 1781, (post. chap. 947), the act of September 15th, 1784, (post. chap. 1101), and the act of 12th September, 1789, (post. chap. 1422.)

For the inspection of Staves, Heading, Boards, and Timber, see the acts of May 20th, 1767, (chap. 562)—April 5th, 1790, (chap. 1501, March 17th, 1796, (chap. 1869) March 30th, 1803, (chap. 2462), and March 20th, 1810.—Of Shingles, September 29th, 1789, (chap. 1440, and April 5th, 1790, (chap. 1503.)

For the acts respecting Wine, Beer, and Ale Measure, and respecting weights and measures, see ante. pa. 18-43. (chap. 7, 138.)

By an act passed April 7th, 1807, (chap. 2820.) Hog's Lard exported from the port of Philadelphia is subjected to inspection, by the inspector of Butter.

(\*) This subject is now regulated under the inspection and revenue laws of Congress.



# ACTS

OF THE

## General Assembly of Pennsylvania.

Passed at a Session which commenced October 14th, 1722,  
and ended May 11th, 1723.

1723.

WILLIAM KEITH, LIEUTENANT GOVERNOR.

### CHAPTER CCLXII. \*

*An ACT for reducing the interest of money from eight to six per cent. per annum.*

Six per cent.  
to be lawful  
interest of  
money, &c.

*BE it enacted*, That no person shall, directly nor indirectly, for any bonds or contracts to be made after the publication of this act, take for the loan or use of money, or any other commodities, above the value of six pounds for the forbearance of one hundred pounds, or the value thereof, for one year, and so proportionably for a greater or lesser sum, any law, custom or usage, to the contrary notwithstanding.

Persons tak-  
ing more  
than six per  
cent. forfeit  
the money  
or things  
lent.

*II. And be it further enacted*, That if any person or persons whatsoever do or shall, after the publication of this act, receive or take more than six pounds *per cent. per annum*, on any such bond or contract as aforesaid, upon conviction thereof, the person or persons so offending, shall forfeit the money and other things lent, one half thereof to the Governor, for the support of government, and the other half to the person who shall sue for the same, by action of debt, bill, plaint, or information, in any court of record within this province, wherein no essoin, protection, or wager of law, or any more than one imparlance, shall be allowed.

Passed 2d March, 1723.—Recorded A. vol. II. page 236. (s)

(s) Interest was refused pending a writ of error; but in the case of promissory notes, where a day certain is fixed for payment, interest is allowed from the day of payment; and where no day is fixed, it is payable from the

\* The original roll containing this act was not to be found; it is, therefore, collated with the recorded copy. (Note to former edition.)

time of demand. 1 Dallas, 52. Where money was received, as well as paid, in a mistake, and neither fraud or surprise can be imputed to either party, no interest will be allowed. *Ibid.*

The usurious contract was stated in several counts of the declaration to be with two persons jointly, as partners, but the proof was of a note given by one of them alone, and the variance was held to be fatal. 1 Dallas, 216.

New notes, including the usurious interest, were given for others, which had become due, without the actual payment of any money; but it was ruled by the court, that the second notes were a satisfaction of the first, and that the usury was complete, on the defendant's accepting them, as thereby the original contract between the parties was extinguished. 1 Dallas, 216.

A fair purchase may be made of a bond or note, even at twenty or thirty per cent. discount, without incurring the danger of usury. 1 Dallas, 217. For the difference between the purchase of a note, and an usurious loan, see *ibid.* page 216. 2 Dallas, 92.

Interest is not payable upon an open account between two citizens, without notice that it would be charged, or an agreement to pay it: 1 Dallas, 265. There are only three cases in which interest can be allowed on an open account; 1st, where it is payable by the express agreement of the parties; 2dly, where it is payable by a general usage, as in the trade between England and America; and 3dly, where there has been a vexatious and unreasonable delay of payment. 1 Dallas, 315.

Where one man has received money belonging to another, and has retained it without the consent of the owner, it is to be considered as money lent, and ought to carry interest. 1 Dallas, 349.

For the mode of computing the interest on a bond, where partial payments have been made, see 1 Dallas, 124, 378. (*Note to former edition.*)

In an action on a promissory note, the defendant pleaded the act in the text; and thereupon the following points were ruled by the court, in their charge to the jury.

1st. That where more than legal interest was included in any note, bond, or specialty; the whole amount could not be sued for and recovered: but the plaintiff was entitled, in such case, to a verdict for the just principal, and lawful interest.

2d. That if a man directly, or indirectly, actually receives more than six per cent. he incurs a forfeiture equal to the money, &c. lent; but if an action is brought to recover the amount of the

loan, a verdict ought not to be given for the defendant, as that would, in effect, be putting the money into his pocket, instead of working a forfeiture to the commonwealth. *Wycoff v. Longhead.* 2 Dallas, 92.

Bond, conditioned for the payment of £. 740, in seven years, and the interest thereon yearly, and every year; and an agreement indorsed thereon, by the obligor, that if any part of the interest should remain unpaid for the space of three months, to allow the obligee lawful interest for the same, from the end of the said three months until paid; the agreement may be enforced, and is not usurious.

*Pawling's executors v. Pawling's administrators.* Franklin, (Teates & Smith, J.) Circuit Court, on great deliberation. MSS. Reports.

*Miscellaneous notes respecting interest.* (See ante. pa. 7, chap. 48, sect. 2, and the concluding part of the note thereto, pa. 9, 10.)

Where one pays money properly chargeable against the State, he is entitled to interest from the time of payment; but in common cases, a demand must be made on the Legislature, before they can be charged with interest. MSS. Reports, Sup. Court. And see *Respublica v. Mitchell*, 2 Dallas, 101. Which was an appeal from the settlement of *Mitchell's* account by the Comptroller General; and the cause had been referred by consent. The referees reported a sum due to *Mitchell*; but had omitted to allow him interest; which being stated to the Court, *It was resolved*, that the State was liable to pay interest as well as individuals; and that the Court would add it, under the circumstances of the case, although the referees had not expressly given it in their report.

A British subject not entitled to interest during the war. 2 Dallas, 102-3-4, 183. And see Mr. *Jefferson's* celebrated reply to Mr. *Hammond*. *Ibid.* (in note) 104.

When trustees shall be chargeable with interest; see 2 Dallas, 182-3. 1 Binney, 194.

A trustee is entitled to interest for advances made to supply the deficiency of the trust fund, although the interest and advances nearly absorb the equitable interest. 1 Binney, 488.

In case for goods sold; it was proved, that at the time of the sale, the defendant was informed, that it was the course of the trade, to give six months credit; or, if cash was paid, to discount five per cent. but that punctuality, and not interest, was the object of the plaintiffs.

*By the Court.* The established course



1723. of the plaintiff's trade is proved ; and also the knowledge of the defendant. It appears, therefore, to be a part of their contract, that interest should commence, at the expiration of six months credit. *Knox v. Jones*. 2 Dallas, 193.

And in the case of *Pawling v. Pawling*, before cited, one of the Judges, in delivering his opinion, says, "it is now the law, founded on reason and justice, and conducive to fair dealing, and punctual payment, that where money is made payable by an agreement between the parties, and a time given for the payment of it, this is a contract to pay interest from the day, in case of failure of payment at the day. 2 Burr. 1088. 3 Wils. 127. Or in case of a long delay, under vexatious or oppressive circumstances.

And it is now a settled rule, that interest is recoverable for money lent and advanced ; and this rule applies to loans made when the rule of law was held to be otherwise. 1 Binney, 488.

Where the condition of a bond is for the payment of interest annually, and the principal at a distant day, the interest may be recovered before the principal is due, in an action of debt, on the bond. But no interest can be recovered on such interest. 1 Binney, 165.

Interest must be paid according to the *lex loci* where the debt was contracted. MSS. Reports, Supreme Court.

It is by no means a matter of course, that rent in arrear should pay interest ; and unless unreasonable and vexatious delay has occurred in withholding rents, interest is not properly chargeable thereon. *Smith's executor v. Montgomery*. Cumberland, April, *Nisi Prius*, 1796, before *Shippen* and *Yeates*, Justices. MSS. Reports.

So, in *Albright v. Pickle*, Northumberland, Circuit Court, October, 1805. It was held by the Court, "That it is not the usage in this State to allow interest on rent ; but from the time the landlord distreins, or sues for it, it is customary for the jury to make such allowance. The practice is right and proper in itself. Where one unreasonably and vexatiously delays another from the recovery of his just debt, the least compensation he can make is to pay interest for the delay he has thus given.

The jury may give interest beyond the penalty of a bond for the performance of a contract. *Perit v. Wallis*. 2 Dallas, 252.

Interest on judgments—see the note to chap. 48, ante. pa. 7.

Judgment given merely as a security. Interest ought not to be calculated on the amount of the judgment, (which included principal and interest,) but only on the sum originally due. 3 Dallas, 506.

## CHAPTER \* CCLXIII.

*An ACT to rectify proceedings upon attachments. (t)*

WHEREAS, in the execution of a law of this province, entitled *An act about attachments*, divers irregularities and fraudulent practices have happened, to the injury of such creditors as were willing to accept of an equal share of their debtors effects, in proportion to their demands, and not have them wasted in needless prosecutions, contrary to the true design of the said act : Therefore, to prevent such practice for the future, *Be it enacted*, That from henceforth no writ or writs of attachment shall issue forth or be granted, before the person or persons requesting the same, or some other credible person or persons for him or them, shall, upon oath or affirmation, declare, that the defendant in such attachment is indebted to the plaintiff therein named in the sum of forty shillings,

Writs of attachment, when to be issued.

(t) For a general reference to the laws and adjudications respecting foreign and domestic attachments, see

ante. chap. 142, and the note there subjoined. See, particularly, Dallas's Reports, pages 152, 450.

\* The original roll containing this act was not to be found ; it is therefore, collated with the recorded copy. (Note to former edition.)

or more; and that the defendant is and has been absconded from the place of his usual abode for the space of six days, with design to defraud his creditors, as is believed; and that the defendant has not left a clear real estate in fee-simple within this province, sufficient to pay his debts, so far as such plaintiff or deponent knows or believes. Which oath or affirmation the officer that grants such writs is hereby empowered and required to administer, and to file the same in the court to which the said attachment is returnable: And if any attachments be granted or issued out otherwise, or contrary to the true intent and meaning hereof, the officer or person so granting the same shall, for every such offence, forfeit the sum of five pounds; the one half for the use of him or her that will sue for the same, the other half to the Governor, for the support of government. (u)

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See the act  
of April 4th  
1809.

III. And if any of the defendant's money, or other effects, happen to be garnished in other hands, the same shall also be attached, and the garnishees obliged to appear and answer at the return of such writs, and be proceeded against in such manner, as by the above cited act is directed.

Defendant's  
effects gar-  
nished, shall  
also be at-  
tached.

VIII. *Provided always*, That the persons nominated as Auditors shall give public notice, thirty days before the sale or disposition of such goods or effects as aforesaid, by a public advertisement in the *Weekly Mercury*, or affixed on the doors of the respective Court-houses of this province.

To give thir-  
ty days no-  
tice before  
sale of ef-  
fects.

Passed 2d March, 1723.—Recorded A. vol. II. page 256. (x)

(u) Jurisdiction is given to a Justice of the Peace to grant attachments in cases of debts not exceeding five pounds, (post. chap. 399.)

(x) This act is almost wholly repealed and supplied by an act passed December 4th, 1807, (post chap. 2873) entitled "An act to alter and amend the several laws of this commonwealth relative to Domestic Attachments."

The repealing clause, in the 20th section of this latter act, is in these words: "And be it further enacted, &c. that so much of any act of Assembly, as is hereby altered or supplied, be, and the same is hereby repealed." A mode of repeal which considerably obscures the laws; leaves much to doubtful construction; and throws great difficulty in the way of an editor. The third and eighth sections of the original act are therefore retained, as not being embraced within any of the provisions of the new act. The 14th section of the new act, in some measure bears on the third section of the act in the text, and gives the clause of *capias* against the garnishee, as in case of *foreign* attachment. The first section is partially supplied.

By the act of 1807, the law respecting *Domestic attachments*, stands as follows:

1. The Courts of Common Pleas, respectively, on the oath or affirmation of the creditor, or other credible person for him, of the truth of the debt, and that the debtor has absconded or departed from the place of his usual abode in this state, or remained absent from the state, or has confined himself to his own house, or concealed himself elsewhere, with design as is believed, to defraud his creditors; and has not left a clear real estate in fee-simple, within this state, sufficient to pay his debts, so far as deponent knows or believes, may issue writs of attachment, against all the lands, tenements, goods and chattels of such person so *absconding, absenting, confining, or concealing himself*.—"Provided always, that the said departure, absence or concealment, shall be proved by the oath or affirmation of a disinterested witness."

[By an act passed April 4th, 1809, this proviso is repealed and made void, and the oath, above required may be administered either by the Prothonotary of the court, or before a Justice of the Peace, as the case may require.]

2. The officer to whom the writ is directed, shall attach all the lands, goods, chattels, and effects of the defendant, in whose hands soever the same can be found, which chattels and



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effects, shall be appraised, inventoried, and secured, by such officer; and perishable goods attached, may be sold, by the discretionary order of any Judge of the court from which the process issued, and the monies shall be received by the officer, and be paid over by him to the trustees, &c.

[By the third section of the act in the text, the expressions are, "If the defendant's money, or other effects happen to be garnished in other hands, the same shall also be attached, and the Garnishees obliged to appear and answer at the return of such writs, and be proceeded against in such manner as by (chap. 142, ante. page 45) is directed.]

3. The court on the return of the writ, shall appoint three trustees for all the creditors of such debtor, with power to audit the accounts, adjust the demands of the creditors, and settle their shares of the estate, and they shall report their proceedings therein to the said court; which trustees, before they proceed, shall take an oath or affirmation, to be administered by the Court appointing them, well and truly to execute the trust reposed in them, &c. and the court shall allow them a reasonable compensation for their trouble out of the property attached.

[By the act of April 4th, 1809 before mentioned, it is declared to be competent to any Judge, Alderman or Justice of the Peace to administer the oath to the trustees.]

4. The trustees shall take into their possession all the estate of the debtor, whether attached, as aforesaid, or afterwards discovered by them, and all books, papers and vouchers relating to the same; and shall be deemed vested with all the estate of such debtor, at the time of issuing the said attachment; and shall be capable to sue for and recover the same, and all debts or things in action, due or belonging to such debtor, at that time, or at any time thereafter, and all the estate attached as aforesaid, shall be by the Sheriff who took the same, delivered over to the said trustees. *Provided*, that in case of a *bona fide* purchase made, or assignment taken from or under such debtor, for a valuable consideration, by any person having no notice of the attachment, such purchase or assignment shall not be invalidated or impeached; and *provided also*, that if any person indebted to the party, against whom an attachment has been issued as aforesaid, or having the possession of any of his property, shall *bona fide*, pay the said debt, or deliver the said property to the said party, without notice of the attachment, he

shall not be liable to pay, or deliver the same to the trustees.

5. All prior conveyances of lands or goods, to children, or others, or any transfer of debts or demands, into other persons names, with intent to defraud creditors are rendered ineffectual, and the trustees shall have power to recover and dispose of the same, as if the defendant had been actually seized or possessed thereof.

6. The trustees may make public sale and assurance of the estate belonging to such debtor, which shall be good and effectual in law, against him, his heirs, executors and assigns; and may grant and assign, or otherwise order or dispose of all or any of the debts, due, or to be due, to or for the benefit of the defendant, to the use of his creditors; and the same grant, assignment or disposition of the said debts, shall vest the right and interest thereof, in the person or persons to whom it shall be so granted, assigned or ordered, so that such assignees may sue for and recover the said debts in their own names, and detain the same to their own use: And after such grant, assignment or disposition made of the said debts, neither the said defendant, nor any other, to whom such debts shall be due, shall have power to recover the same, nor to make any release or discharge thereof.

[The 8th section of the act in the text, requires thirty days notice.]

7. If lands, goods or estate, are conveyed and assured by defendant, upon condition or power of redemption, by payment of money, or otherwise, the trustees or any person by them appointed by writing under hand and seal, may make tender of money, or other performance, according to the nature of such condition, as fully as defendant might have done, and the said trustees, after such performance or tender, shall have power to sell and dispose of such lands, goods and estate, for the benefit of the creditors.

8. The trustees, immediately on their appointment, shall give notice in two newspapers in the city of Philadelphia, and in one newspaper in the county in which the attachment issued, or if none be printed in such county, by setting up four advertisements in four of the most public places of such county, and require all persons indebted to defendant, to pay and deliver to them all money and property due and belonging to the debtor, and also to desire all creditors to deliver to them their respective accounts and demands; and if any controversy shall arise, concerning any claim by any creditor, or concerning any debt



or demand, claimed by the trustees, they may agree with the opposite party to refer the same to arbitrators, mutually chosen, and if the parties will not agree to a reference, an issue shall be made up between them, and a jury shall be impanelled, as in other cases, to try the same.

9. The trustees may summon before them, and examine all persons supposed to be indebted to defendant, and such other persons as they shall think fit, upon interrogatories, or otherwise, on oath or affirmation, which they are empowered to administer, touching the lands, tenements, goods, chattels or effects of defendant, and such other things as may tend to disclose their estates, or their secret grants or alienation of their effects; and if such person shall refuse to attend, or to be sworn or affirmed, and to make answer to such questions or interrogatories, as shall be administered, he, or they may be committed to prison, to be detained till he or they shall submit to be examined as aforesaid. And the trustees, by warrants under their hands and seals, may cause to be broke open, any houses, chambers, shops, warehouses, door, trunks or chests of defendants, where their goods or effects shall be, or reputed to be, and seize the same for the use of their creditors.

10. *Bona fide* creditors, on securities payable at a future day, and not due at the time of issuing the attachment, shall be admitted to prove their debts and contracts, as if they were payable presently; and shall have a dividend in proportion to the other creditors, discounting, where no interest is payable, at the rate of so much *per cent. per annum*, as is equal to lawful interest; and where mutual credit has been given by such debtor and any other person, or mutual debts between them at any time before the issuing the attachment, the trustees shall state the account, and one debt may be set off against the other; and the balance, and no more, shall be claimed, or paid, on either side respectively.

11. At the expiration of six, and within nine months after the first notice, the trustees shall make distribution, first deducting legal charges and commissions: And no preference shall be allowed to debts on specialties. And if the whole estate shall not then be distributed, a second dividend shall be made three months after, and so on every three months, till the whole estate shall be distributed.

12. A majority of the trustees shall form a quorum to do business, and the

court shall supply vacancies by a new appointment.

13. The court shall dissolve the attachment, on the facts of absconding, absence, or concealment, being disproved by the debtor, or any person on his or her behalf, at any time during the term to which the process is returnable.

14. A clause of *capias* against the garnishee may be inserted in the body of the writ, under the same rules and regulations as are prescribed by law in cases of foreign attachment.

[See the notes to chap. 142, ante. p. 45, and the act passed September 28th, 1789, sect. 4, (chap. 1434.)]

17. (15 and 16 *infra*.) No second or other attachment shall be issued against the same defendant, unless the first be not executed, or be dissolved by the court; and the overplus of debtor's estate shall be returned to him, his executors, or administrators.

18. The death of the debtor after issuing the attachment, shall not abate or affect the proceedings therein, but the same shall go on to a final conclusion, and with equal validity, as if such debtor had lived.

19. The laws of the commonwealth, relative to foreign attachments, not altered, or to be affected by this act.

By an act passed August 22d, 1752, (post. chap. 399,) entitled, "An act for regulating attachments, not exceeding five pounds," Jurisdiction is given to Justices of the Peace to that amount: and the particular form of proceeding is prescribed; and a penalty of five pounds is inflicted on the Justice, for issuing any attachment, contrary to the true intent and meaning thereof.

The 15th section of the act of December 4th, 1807, extends the jurisdiction of Justices and Aldermen, to *all cases of attachment* authorized by the said act of 1807, where the debt or demand of the plaintiff does not exceed one hundred dollars, subject, otherwise, to the same rules, regulations and restrictions prescribed in the act of 1752—but the above mentioned penalty on the Justice is extended to one hundred dollars.

And by sect. 16, of the act of 1807, the Justices and Aldermen shall have the like power with the Courts of Common Pleas, to dissolve writs of attachment, in cases within their jurisdiction, and upon the same proofs, provided application be made for that purpose, within twenty days after the return of the writ.

By the second section of the act of 1752, if after a full and careful examination it shall appear that there is a just



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debt due to any one person from defendant, exceeding the sum of *five pounds*, (*now one hundred dollars*,) then and in every such case, the Justice shall no further proceed, but shall deliver and certify to the Prothonotary of the County Court of Common Pleas for the same County, the said attachment, and all proceedings thereon had before him; and the Justices of said Court may grant and issue one writ of attachment only to the person who obtained the attachment from the Justice, if he demands the same, or if not, to any other creditor, to the Sheriff, &c.

No second attachment to issue, either from the Justice or the court, pending any prior attachment, issued either by the Justice, or court.

On the subject of *domestic* attachments, the following cases have occurred:

*Hollingsworth v. Hamelin.*

The defendant having absconded, a domestic attachment issued against him at the suit of the plaintiff, and the auditors, under that process, having advertised that all persons who had demands, should send in their accounts in a reasonable time afterwards, made a dividend among the creditors who filed their claims.

Previously to issuing the domestic attachment, the defendant was indebted to the commonwealth for duties upon a cargo imported, and having given bond to *Sharp Delany*, (who was the Collector, but not so named in the bond,) a writ was thereupon issued against him, but was returned *non est inventus*. Of this, however, the auditors had no notice, till the dividend above mentioned was paid. *Delany* now claimed full payment.

The matter was referred to the opinion of the court, upon a case stated; and, after argument, the court unanimously decided, that on these facts, the commonwealth was entitled to no preference. In the Common Pleas, Dec'r, 1785. 1 Dallas, 151.

And in *Lazarus Barnet's* case, the foreign and domestic attachment laws received a full consideration, and decisive construction; especially as to what constitutes an *inhabitant*, so as to render the party an object of the one or the other of these laws. To this case, the reader is generally referred, as it would swell this note to an unreasonable length, to insert it entire. The latter part of the judgment of the court, as pronounced by *Shippen, President*, is in these words: "The word '*inhabitant*' has a plain meaning. A person coming hither occasionally, as a captain of a ship, in the course of trade, cannot be called an in-

habitant; nor does a person going from his settled habitation here, on occasional business to *Boston*, or any other place, cease to be an inhabitant. But a man who comes from another place to reside among us, introduces his family here, takes a house, engages in trade, contracts debts, and, after some time, runs away with design to defraud his creditors, he ought surely to be considered such an inhabitant, as not to be an object of the *foreign* attachment, but of the *domestic* one, and as a person whose effects should be seized for the benefit of all his creditors, and not of the first creditor who shall take out a *foreign* attachment, otherwise there would be few objects for this equitable law to operate upon."

Such has been the uniform construction of the law of attachments in *Pennsylvania*, from the year 1724, to the passing of the act of 14 Geo. 3. c. 5. which last act gives a legislative sanction to the preceding practice. 1 Dallas, 152.

[The act of 14 Geo. 3. c. 5. sect. 4, passed January 22d, 1774, referred to above, is chap. 691 of this edition. But the 4th section is repealed and supplied by the act of 1807.]

See *Taylor v. Knox*, 1 Dallas, 153. And *Lyle v. Forman*, *ibid.* 480.—*Foreign attachment.* It was proved, that on the 5th of December, defendant was at Lancaster, on his way to Fort Pitt, where he intended to proceed to the Spanish settlement, below the Natchez, on the Mississippi; but was actually at Fort Pitt on the 2d January, 1790. The process was returnable Dec'r, 1789.

*Shippen, President*, observed, that while a man remained in the State, though avowing an intention to withdraw from it, he must be considered as an *inhabitant*, and therefore not an object of the foreign attachment. If an inhabitant clandestinely withdraws, or secretes himself, to avoid his creditors, he becomes liable to the domestic attachment. The having once been an inhabitant will not, however, protect a man, for ever, from a foreign attachment, where he has notoriously emigrated from the State, and settled elsewhere. But the case before the court, is that of a foreign attachment issued at the very time the defendant was an inhabitant of the State, which cannot be maintained. Attachment quashed.

An unmarried man, who took lodgings in the city, rented a store, and traded there, declaring his intention of taking up a permanent residence, and residing there six months, who afterwards absconded, was declared an *inhabitant*, under the domestic attachment law. MSS. Reports, Supreme Court.

The *affidavit* on which a domestic attachment is grounded, is not conclusive, and the attachment may be dissolved on proper proof, without previous notice to the creditors. MSS. Reports, Supreme Court.

Domestic attachment issued against an absconding debtor under the act in the text. On the application of the defendant afterwards to enter special bail, the court will not dissolve the attachment, provided it issued on due grounds.

*Benner v. Cotgreave*, Circuit Court, Allegheny county, before *Yeates & Smith*, Justices, November, 1804. After advisement, The Court said they could find no instance of such a motion; though in a plain case, they would have no difficulty in protecting a debtor from the malevolence or mistake of his creditors, who had issued a domestic attachment against him, provided he applied in due and convenient time.

The facts were these: The attachment had issued in the Court of Common Pleas of Allegheny county, on the 11th May, 1804—on filing the *affidavit* required by law, returnable to the following June term; the attachment was returned, and auditors appointed.

At an adjourned court, on the 4th August, 1804, the defendant appeared in his proper person, and moved by his counsel for leave to enter special bail, and that thereupon the attachment should be dissolved. The motion was overruled, as not admissible in law.

The cause was then removed, under a special *allocatur*, to the Circuit Court, and the motion to enter special bail was there renewed.

It was admitted, that since the attachment was taken out, the defendant had been arrested on two writs of *capias*, one issued August 23d, 1804, and the other October 4th, following, and had given special bail. And it was further admitted, that the defendant, when the attachment issued, was an absconding debtor within the meaning of the act in the text.

Under these circumstances, the court said, they found themselves constrained to over-rule the motion.

A judgment has relation to the first day of the term, so as to exclude a domestic attachment, in favour of the judgment creditor.

For cases on foreign attachments, see the notes to chap. 142, ante, pa. 45;



# A C T S

OF THE

## General Assembly of Pennsylvania,

Passed at a Session which commenced October 14th, 1724,  
and ended August 21st, 1725.

1724-5.

WILLIAM KEITH, LIEUTENANT GOVERNOR.

### CHAPTER CCLXXXV.

*An ACT to regulate the practice upon writs of summons and arrest. (y)*

**WHEREAS** it hath been the earnest endeavours of the legislative power of this government to provide for the liberty of the subject, by regulations of this kind, without the least design of protecting mens estates from payment of their debts; but, so far as justice would permit, to maintain the freedom of their persons, according to the ancient common law of England, which suffered not the body, in case of debt, to be detained in prison, but be at liberty to follow his own affairs and business, &c. And it seems highly just

(y) There is no privilege of exemption from being sued by *capias* vested in a county Lieutenant, who comes from a distant county to Philadelphia, in order to obtain commissions for the militia officers; nor in a Sheriff elect, who comes to solicit his commission, and to give official sureties. 1 Dallas, 295.

A member of the State Convention, which adopted the Federal Constitution, coming from a distant county, was adjudged to be privileged from arrests, or being served with a summons, or other process, issuing out of the Common Pleas of Philadelphia, during his attendance on the duties of his appointment. 1 Dallas, 296.

One of the defendants in a foreign attachment was an American Consul, and in that character actually residing abroad, in the public service; but the court, notwithstanding, refused to quash the attachment. 1 Dallas, 305, *in not.*

In trespass *vi et armis*, a *capias* was issued; but on proof that the defendant was a freeholder, the writ was quashed; though it was contended that the case was not within the act, a fine being due to the commonwealth, upon the judgment *capiatur pro fine*, in actions *vi et armis*. Unless it is a suit on a recognizance, or for a fine actually due to the state, the court would not take up a mere fiction, to defeat a positive privilege. 1 Dallas, 310.

On a rule to shew cause why a *capias* should not be quashed, it appeared that the defendant was a freeholder; but that the plaintiff, having delayed issuing process until within three or four days of the term, had issued a *capias*, and directed the Sheriff to accept the defendant's agreement to appear. After argument, the rule was made absolute. 1 Dallas, 348. (*Note to former edition.*)

that the same reason should take place in this new colony, where 1724-5.  
 plantations are to be improved by hard labour and great diligence :  
 Therefore, *Be it enacted*, That no freeholder, inhabiting in any part  
 of this province, who hath resided therein for the space of two years,  
 and has fifty acres of land, or more, in fee-simple, well seated, and  
 twelve acres thereof, or more, well cleared or improved, or hath a  
 dwelling-house worth fifty pounds current money of America, in some  
 city or township within this province, clear estate, or hath unimproved  
 land to the value of fifty pounds like money, shall be arrested or  
 detained in prison by any writ of arrest, or *capias ad respondendum*,  
 in any civil action, unless it be in the King's case, or where a fine is  
 or shall be due to the King, his heirs or successors ; or unless they  
 be such freeholders as by this act are made liable to be arrested ; but  
 that the original process against freeholders shall be a writ of sum-  
 mons, under the hand and seal of one of the Justices of the Court  
 of Common Pleas for the proper county, directed to the Sheriff or  
 Coroner there as the case may require, commanding to summon the  
 defendant : The form of which writ shall be as followeth, *viz.*

No freeholder to be arrested; and who shall be deemed such.

Except in the King's case, &c.

Process to be by writ of summons.

[GEORGE, *By the grace of God, of Great-Britain, France and Ireland, King, Defender of the Faith, &c.*] *The Form.*  
*To the Sheriff of the county of* Greeting. *We command you, that you*  
*summon* so that he be and appear before our  
*Justices* at at our Court of Common  
*Pleas, there to be held* day of next, to an-  
*swer the complaint of* of a plea, &c.  
*Witness* Esq. day of  
*at* in the year of our reign.

And if the defendant in such writ does not appear at the day of  
 the return thereof, but makes default, and the officer to whom such  
 writ was directed, or his lawful deputy, doth certify to the court,  
 upon oath or affirmation, that on or before the day of the return of  
 such writ, he hath summoned the defendant, mentioning the day he  
 did so, or left notice in writing of such summons at the house of  
 the defendant, in the presence of one or more of his family or  
 neighbours, signifying that the defendant should be and appear ac-  
 cording to the contents of such summons ; upon which return, if  
 the defendant has been so served ten days, and the plaintiff had  
 filed his declaration in the office of the Prothonotary, within the  
 space of five days before the court to which such writ is returna-  
 ble, it shall be lawful to and for the plaintiff in such action to file a  
 common appearance for the defendant so making default, and pro-  
 ceed to judgment and execution by *nihil dicit*. (z)

The defend-ant not ap-pear- ing upon such sum-mons, &c.

The plaintiff may proceed to judgment and execu-tion.

II. *Provided always*, That nothing herein contained shall exempt  
 any person from being arrested, or shall debar any person from tak-  
 ing out writs of arrest, if the plaintiff in every such writ, or some-

Proviso, where a free-holder may be arrested,

(z) The style of the writ is repealed and supplied. [The writ in section I. must be changed in the form—" *The Commonwealth of Pennsylvania.*—]

person of the defendant, as well as if left at his house, must be ten days before the return, in order to entitle the plaintiff to judgment by default. 1 Dal-

The service of a summons on the las, 154. (*Note to former edition.*)



1724-5. body for him, doth make appear by affidavit, upon oath or affirmation, which the Justice that grants such writ is hereby empowered and required to administer, testifying, that the defendant in the same writ named hath signified his intentions of going to sea, or of removing out of this province, or lurks in secret places, or conceals himself in his own or others house; or that the defendant in such writ hath refused or neglected, upon demand, to give either real or personal security for the debt, or refused, without process, to appear and put in special bail to the plaintiff's action for the debt or cause for which he complains; or that the defendant suffered himself to be arrested, or judgment to be entered against him; or made over his lands or chattels to others, or suffered them to be attached, and made no proper defence to such proceedings; or where the plaintiff can make appear from records, or otherwise, that so much of the defendant's estate is mortgaged, aliened, entailed, or liable to one or more judgments suffered or ordered to be entered against such defendant, so that the value of his fee-simple estate, in possession, clear of those, and all other incumbrances, will not, as the deponent believes, be sufficient to satisfy the debt demanded; or that the defendant in such writ hath not been a resident in this province for the space of two years next before the date of the same writ: In all which cases, writs of arrest shall be granted, and the defendant held to special bail, if the case requires it; and the Justices that grant the same shall cause all the affidavits they take, as above required, to be filed by the clerk of the court where such writs are returnable. (a)

Freeholders arrested within the intent of this act, the writ to abate, and the defendant allowed costs.

III. But if any freeholder, exempted from arrests by virtue of this act, shall happen to be taken by any writ of arrest, the court, where such writ is depending, shall forthwith, upon the defendant's motion, stay all further proceedings against him till they examine his circumstance; and if they find he is such as by this act is intended to be exempted, the court shall of their own accord abate the writ, and allow the defendant thirty shillings costs to be paid by him or them that procured such writ, and for non-payment thereof, the court shall grant an attachment, as in other cases where a rule of court is not complied with.

Persons offending against this act to answer at the Supreme Court.

IV. And if any of the Justices or clerks of the said courts, or practitioners at law, shall contemn this act, and wilfully proceed in the premises, contrary to the direction thereof, they shall be liable to answer, and be fined for the same, at the Supreme Court of this province, any sum not exceeding ten pounds.

Repeal of a former law, (chap. 101.)

V. And be it further enacted, That the act directing the process of summons against freeholders, and every article, clause or

(a) The court have a controuling power to enquire into the circumstances of the case, and to relieve a defendant from an arrest, if they think he was intended to be exempted, although the words, that *he has not been resident*, may be inserted in the plaintiff's affidavit, before the *capias*-issues. 1 Dallas, 241. What circumstances of absence will not be sufficient to destroy a freeholder's privilege. Ibid. 348,

A judgment obtained before a Justice of the Peace is sufficient to destroy a freeholder's privilege. 1 Dallas, 436. (Note to former edition.)

[Of the writs of *capias*, and summons in *Pennsylvania*, and the difference between them and English writs, &c. See 1 Dallas, 412.]

thing, therein contained, shall be and are hereby repealed, to all intents and purposes whatsoever. 1724-5.

Passed 20th March, 1724-5.—Recorded A. vol. II. page 318. (b)

(b) Considerable alterations in the practice of the courts are made by the act entitled "An act to regulate arbitrations and proceedings in Courts of Justice," passed March 21st, 1806, (post. chap. 2686.) By sect. 10, new forms are devised and prescribed, of the summons against a freeholder, and the writ of *capias*. And the defendant has until 20 days previous to the second term to file his statement of defence; and must appear on the third day of the second term, where the term is but one week, and on the second Monday of the term where the same is to continue two weeks; and in case of default in such appearance, the court shall render judgment against him, which supersedes the old practice of judgment by default at the first term under the first section of the act in the text.

By the tenth section of the consolidating act, respecting the jurisdiction of Justices, passed March 20th, 1810, No judgment, whether obtained before a Justice, or in any court of record within this Commonwealth, shall deprive any person of his or her right as a freeholder, longer, or for any greater time than such judgment shall remain unsatisfied.

#### Of Privilege.

An ejectment, depending in *Allegheny* county, was marked for trial on the list of causes at *Nisi Prius*. The defendant's attorney, after looking at the papers of the opposite party, confessed judgment.

On *Affidavit* of defence, a motion was made in the Supreme Court, to set aside the judgment, on the ground, principally, that the defendant was a member of the General Assembly, attending his public duty, at the time of marking the cause for trial and confessing judgment.

*By the Court.* A member of the General Assembly, is, undoubtedly, privileged from arrest, summons, citation, or other civil process, during his attendance on the public business confided to him. And, upon principle, his suits

cannot be forced to trial and decision, while the session of the Legislature continues.

But every privileged person must, at a proper time, and in a proper manner, claim the benefit of his privilege. The Judges are not bound, judicially, to notice a right of privilege, nor to grant it without a claim. In the present instance, neither the defendant, nor his attorney, suggested the privilege as an objection to the trial of the cause; and this amounts to a waiver, by which the party is for ever concluded.

We are therefore, unanimously of opinion, that the judgment cannot now be set aside, or opened. *Geyer's lessee v. Irvin*, 4 Dallas, 107.

Privilege of a foreign minister. 4 Dallas, 321.

A witness is privileged from arrest for a reasonable time, to prepare for his departure, and return to his home, as well as during his actual attendance upon court. But the privilege does not extend throughout the term, at which the cause is marked for trial; nor will it protect him while the witness is engaged in transacting his general private business after he is discharged from the obligation of the *subpœna*. *Smythe v. Banks*, Circuit Court, *United States*. 4 Dallas, 329. So, from an arrest on a *ca. sc.* *Hurst's case*, 4 Dallas, 387.

No privilege against a *subpœna*.—*Semb.* 4 Dallas, 341.

Privilege of members of Congress from arrest on *mesne* process, or execution. 3 Dallas, 478.

A party while attending an appeal from the court of another county to the Supreme Court is privileged from the service of a summons. 1 Binney, 77.

Service of a summons, by leaving a copy with defendant's partner, with whom he has lived, before he went abroad on a trading concern, from whence he is daily expected to return, and who has his children now living with him, held good. *MSS. Reports*, Supreme Court.



1725.

## CHAPTER CCLXXXVIII.

*An ACT for the better preventing obstructions to the navigation of Chester creek, and other navigable creeks and rivers in this province.*

WHEREAS, in the year one thousand seven hundred, it was thought necessary, for the better accommodation of the borough of Chester, in the county of Chester, and the inhabitants of the lower parts of the said county, as well as travellers, that the King's high road should be altered and brought nearer to the river, to pass through the said borough, with a bridge over the said creek there; and thereupon, in consideration of the owners of lands, and especially of the mills, situate on the said creek, above the said borough, which had been erected at great charge, and required the same to maintain and support them, for the benefit of trade, an act was passed in the said year that the road should be laid out as aforesaid through the said borough, and a draw bridge should be there built, and that a person should attend the same to draw it up, that sloops and shallops might pass to and from the said mills: And also that for the conveniency of rafts and logs passing to the said mills, the space of twenty feet at least should be left clear between the timber or stone work; which draw bridge was accordingly erected, but now is gone to decay, and requires to be rebuilt or repaired: Therefore, *Be it enacted*, That the Commissioners for the time being, appointed for the said county of Chester, shall cause the said draw-bridge to be rebuilt or repaired, within the space of twelve months next after the publication hereof, according to the dimensions in the said recited act, and from time to time shall cause it to be continued in repair, for the accommodation of the said mills, and of the owners of lands, and inhabitants on the navigable parts of the said creek, above the borough aforesaid, and also for the accommodation of all such persons, as have occasion to pass and repass with any mast vessel through the said bridge; who are hereby obliged carefully to raise and lower the said draw bridge, so as the same may receive no damage thereby, under the penalty of five shillings for every neglect or offence therein.

Commissioners to repair the draw-bridge over Chester creek, &c.

II. And whereas the erecting of bridges over creeks or rivers of water, to the obstruction of their navigation, where navigable, doth not only affect the interest of the owners of lands upon and near navigable waters above those bridges, but also the trade of this province in general: And the better to preserve the navigation of those rivers and creeks, divers laws of this province have from time to time been enacted, but the same, upon experience, have been found not fully to answer the ends thereby intended: *Be it therefore further enacted*, That no bridge, frame or device whatsoever, shall, at any time to come, be made, erected, upheld, sustained or repaired, over any creek or river within this province, navigable for any sloop, shallop, flat, or other craft, that shall or may any wise stop or hinder the navigation of any such sloop, shallop, flat, or other craft, or floats of logs; any law, custom or usage, to the contrary thereof in any wise notwithstanding.

No bridge to be built on navigable creeks, that may hinder navigation.

**III.** *Provided always,* That nothing herein contained shall be construed to forbid or hinder the maintaining and repairing the draw-bridge herein before particularly mentioned, or any other bridge erected by public authority, or the making of dams, mounds or tide banks, for the draining of low grounds, and improving of meadows, by the owners or owner of the greater part of the lands, low grounds, or meadows, included within the same dams, mounds or tide banks, any thing herein contained to the contrary in any wise notwithstanding. 1725.

No bridge to be built, &c. on navigable creeks, that may hinder navigation.

Passed 14th August, 1725.—Recorded A. vol. II. page 324.

See a supplement to this act, passed September 3d, 1778, (post. chap. 797.) By which, provision is made for erecting a new bridge where the old one stood, without a draw—and so much of the act in the text, as is thereby altered, is repealed.



# ACTS

OF THE

## General Assembly of Pennsylvania.

Passed at a Session which commenced October 14th, 1726,  
and ended August 25th, 1727.

1727.

PATRICK GORDON, LIEUTENANT-GOVERNOR.

### CHAPTER CCXCV.

*An ACT more effectually to prevent unfair practices in the packing  
of beef and pork for exportation. (c)*

Chap. 80,  
(repealed  
March 20th,  
1810.)

The contents  
of the cask.

WHEREAS an act was passed in this province, in the twelfth year of the reign of the late King William the third, entitled, *An act for the ascertaining the dimensions of cask, and for the true packing of meat for transportation*: And whereas the frauds and abuses provided against and intended to be prevented by the said act, relating to the package of beef and pork, and dimensions of cask, are still complained of: For the preventing whereof for the time to come, *Be it enacted, &c.*

[What follows, in sect. 1, and also sect. 2 and 3 are supplied and repealed by an act passed March 12th, 1789, (post. chap. 1384,) which regulates the contents of every tierce, barrel, half barrel and cask; and the cooper's brand; and prescribes the mode of inspecting, packing, and branding the casks for exportation, and the penalty for exportation before inspection, or contrary to the act, or for defacing the brand made by the inspector, whose particular duties are also prescribed. See also the act of September 24th, 1789, (post. chap. 1429.)]—

[The proviso in sect. 4, remains in force.]

On any dis-  
pute arising,  
how to pro-  
ceed.

IV. *Provided always nevertheless, That if any dispute shall happen to arise between the said officer and possessor of such beef or pork, concerning the soundness or package of the same, or contents*

(c) For various acts relative to weights and measures, see ante. chapters, 73, 138, 260. For acts relative to the inspection of bread and flour, see

post. chap. 925, 947, 1101, 1420, and the references to chap. 260, ante. page 155.

of the cask, application being made to one of the Magistrates of the city or county where the said dispute arises, he shall issue his warrant to two indifferent judicious persons of skill and integrity, to view and search the said beef or pork, and make report forthwith, according as they find the same; and the said Magistrate is hereby empowered and required to give judgment accordingly: And in case the said beef or pork is judged not fit to be exported, the said Magistrate shall order it not to be **exported**, under the penalty or forfeiture of all such beef or pork; and shall also award and order the owner or possessor of the said beef or pork to pay the said officer five shillings per cask, for all such beef or pork as shall be adjudged not fit for exportation as aforesaid, with reasonable charges. But in case the said beef or pork, upon trial, shall be found to be good and merchantable, according to the direction of this act, the charges of prosecution shall be paid by the officer.

1727.

[V. Respects the officer's fees, and is supplied by sect. 7, of the act of March, 1789.]

VI. *And be it enacted*, That the said officer, or his deputies, shall have full power and authority, by virtue of this act, and without any further or other warrant, to enter on board any ship, sloop, or vessel whatsoever, lying or being in any port or place in this province, and into any house, store or places whatsoever, within the province aforesaid, to search for and make discovery of any beef or pork shipped or intended to be shipped for exportation; and if the owner or possessor, or their servants, or others, shall deny him or them entrance, or if the said officer, or his deputies, shall be any ways molested in making such discovery as aforesaid, or if such merchant or owner shall refuse to permit the said officer, or his deputies, to view and examine any beef or pork, or not permit him or them to brand the same, if merchantable, according to the direction of this act, every such person, so offending, shall forfeit and pay the sum of ten pounds; or shall ship off any cask or casks of beef or pork not branded with the provincial brand-mark aforesaid, every such person so offending, shall forfeit and pay the sum of ten shillings for every cask so shipped.

His power  
and duty.See sect. 6th  
of the act of  
March, 1789.

[VII. This section provided for the appointment of the officer and his successors, which is now vested in the Governor, by the constitution.]

VIII. But before the said Nathaniel Griffiths, or any other person so to be appointed the officer aforesaid, shall do any thing in the execution of his office, he shall first make oath or affirmation, before any Justice of the Peace of any county of this province, faithfully and impartially to perform his duty and trust, to the best of his capacity, according to the direction of this present act.

The officer  
to make oath  
or affirma-  
tion:

IX. *And be it enacted*, That the said Nathaniel Griffiths, or any other person appointed the officer aforesaid, is hereby empowered to appoint deputies in the respective counties of this province, for whom he or they shall be accountable: which said deputies are hereby fully empowered to act as deputy officers for the viewing, searching, packing and branding, of beef and pork, in manner aforesaid, in their respective counties, to all intents and purposes,

And may ap-  
point depu-  
ties.



1727. as fully as the said Nathaniel Griffitts could do by virtue of this act.

Penalty on  
counterfeit-  
ing the  
brand-  
mark and  
using the  
same.

X. *And be it enacted*, That if any person or persons shall counterfeit the said provincial brand-mark, or impress or brand the same on any cask of beef or pork, he, she or they, being thereof legally convicted, shall, for the first offence, forfeit and pay the sum of five pounds, for the second offence, the sum of ten pounds, and for the third, and every other such offence, the offender shall be committed to gaol, and sentenced to the pillory,\* there to stand the space of two hours, on a market-day, in any city, borough or town of the respective counties of this province, where the fact was committed.

\* Altered by  
the existing  
penal laws.

[XI. This section respected the recovery and appropriation of the fines, &c. and is supplied by the 11th section of the act of March 1789.]

Passed 13th August, 1727.—Recorded A. vol. II. page 345.

# ACTS

OF THE

## General Assembly of Pennsylvania.

Passed at a Session which commenced October 14th, 1728,  
and ended May 10th, 1729.

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PATRICK GORDON, LIEUTENANT GOVERNOR.

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1729.

### CHAPTER CCCI.

*An ACT for erecting of pounds in each township of this province.*

*BE it enacted*, That it shall and may be lawful for the inhabitants of the respective townships within this province, who are owners or possessors of land, to meet on the twentieth day of the month called May, unless it happens on the first day of the week, then on the next day after, yearly, or at such other time as the majority of those that meet may appoint, at the most public place of each respective township, in every county within this province, and there the majority of those so met shall choose a fit person to be pound-keeper, in each township, for the year ensuing; which pound-keeper, where no pound is already erected, shall agree with some person forthwith to build or erect a good and sufficient pound, in some fit and convenient place within the said township, where the same shall be agreed upon by the majority of the persons aforesaid, being then present: A memorandum or minute of which appointment shall be taken and kept by the constable of the said respective townships, and returned to the next County Court, to be held for the county in which the said respective townships do lie; the Clerk of which County Court shall enter the same among the proceedings of the said court, and shall forthwith affix public notice, in writing, on the door of the court-house, of the name of each respective pound-keeper, and the places where the same are erected.

The inhabitants of every township to choose a pound-keeper,

who may agree to erect a pound where there is none.

Public notice to be given where the pound is erected.

II. *And be it further enacted*, That whoever shall take up any stray horse or horses, cattle or sheep, trespassing within their in-

Creatures trespassing to be deli-



1729.

vered to the  
pound-keep-  
er.  
[Post. chap.  
490.]

His duty.

closures, within this province, shall, within the space of twenty-four hours after such taking up, give notice to the owner or owners of such horse, cattle, &c. if he or she can be readily found ; and if the owner shall, upon such notice, neglect or refuse to make reasonable satisfaction to the party grieved, as by them shall be agreed upon, or if no owner be found, then the said taker-up shall take or send such trespassing creature or creatures to the pound-keeper of the township where the trespass was committed, who shall receive the same immediately into his custody, and shall feed them duly with grass or good hay, and water, during the time of their continuance in the pound, and shall pay to the party grieved such damages, as shall be assessed by any two indifferent neighbours living near to the place where the trespass was committed, to be nominated by the said pound-keeper.

To give pub-  
lic notice  
within ten  
days.

III. *And be it further enacted,* That after any horses, cattle or sheep, shall be delivered to any pound-keeper, he shall forthwith enter the kind, colour and marks of such creatures, in a book, by him to be kept for that purpose, together with the day of his receiving the same, and from whom he received them ; and thereupon shall, within ten days, send an account in writing to the Clerk of the County Court, where such township lies, who shall affix the notice in public view in his office ; and the pound-keeper shall also affix notice in writing at the court-house of the same county, of the kind of creatures so impounded, together with their marks described at large, to the end that the owners of such trespassing creatures may the more readily be informed of, and restored to, their property : And if the owner appear and make out his right to the said creatures, the same shall forthwith be delivered to him, he paying to the pound-keeper the sum of one shilling, for taking in and delivering out each creature, together with the damages paid to the taker up of such trespassing creatures, and the sum of six pence a head for horses or horned beasts, for each day, and one penny a head for sheep, for each day, charges allowed by this act, for feeding the said creatures, and publishing their kind and marks in the manner herein directed ; and also the sum of six pence, to the use of the Clerk of the County Court, for entering and filing the certificate

What rates  
shall be tak-  
en by the  
pound-keep-  
er.

No owner ap-  
pearing  
within three  
months, the  
creatures  
may be sold,  
and the  
pound-keep-  
er retain his  
rates.

of the pound-keeper. And if no owner shall appear to claim the creatures so impounded, within the space of three months after impounding, it shall and may be lawful to and for the said pound-keeper, by warrant from one Justice of the Peace of the said county, who is hereby required to grant the same, to expose such trespassing creatures to sale, by public vendue, for the most that can be got for the same, after ten days public notice given of the time and place of sale ; and, out of the money arising by such sale, the said pound-keeper shall and may retain to himself for publishing and booking each horse two shillings, for each horned beast one shilling and six pence, and for each sheep nine pence ; and likewise all such monies as he hath paid to the taker-up of such trespassing creatures, on account of his damages, or other charges allowed by this act : And shall likewise retain to himself the sum of six pence for every day he shall keep such trespassing creatures in the pound,

if the same be a horse or horned beast, and one penny each day for each sheep. And the said pound-keeper shall moreover be allowed the sum of ten per cent. on all sales made by him according to the directions of this act, and shall keep a plain account of all his proceedings, and return the same, together with the overplus money, if any be remaining, to the Justices, at their next County Court to be held for the said county, who shall order the same to be paid to the overseers of the poor of the township where the creature was impounded, for the use of the same township, after the costs paid to the clerk for his service therein.

1729.

The overplus money to go to the overseers of the poor.

*Provided, also,* That if the right owner of any beast, sold as aforesaid, appear within nine months after sale made as aforesaid, and prove his property to any such creature sold in pursuance of this act, before the Justices of the Peace of said county, at the next court, they shall thereupon order re-payment of money arising by such sale to the said owner, all reasonable charges first deducted.

The owner appearing within nine months, re-payment may be ordered.

*V. And be it further enacted,* That if any person or persons shall, by force or otherwise, without the leave of the pound-keeper, or by due order of law, take away any trespassing creature, impounded according to the directions of this act, and shall be legally thereof convict, he, she or they, shall forfeit the sum of five pounds, to be applied to the use of the poor of that township in which the said creature was impounded. And that it shall and may be lawful for the overseers of the poor of the respective townships within this province, and they are hereby enjoined and required, to assess the inhabitants of the respective townships, in the same manner as they are directed by the act for the relief of the poor, for such sum or sums of money as may or shall be necessary for supplying the charge of building and maintaining the said respective pounds, and to collect the same, to be employed as shall be directed by the majority of the freeholders of the respective townships at their town meetings, for and towards the building and maintaining of pounds, and no other use whatsoever: And if any person or persons shall refuse to pay their respective rates as taxed, that then the said overseers shall make complaint thereof to any one Justice within the said county where he resides, who is hereby required forthwith to issue out his warrant to the overseers of the poor of the township where such default is made, to make distress upon the offender's goods and chattels, who shall immediately make sale thereof, for paying the said assessment, and charges of distress, and return the overplus, if any be, to the owner.

Forfeiture on taking away a creature impounded.

Overseers of the poor to assess money on the inhabitants for building a pound.

Persons refusing to pay, distress may be made on their goods, &c.

*VI. And be it further enacted,* That to prevent disputes about the sufficiency of fences, all fences shall be esteemed lawful or sufficient, though they be not close at the bottom, so that the distance from the ground to the bottom thereof exceed not nine inches, and that they be four feet and an half high, and not under.

The height of lawful fences, (ante. page 14 and 15.)

*VII. And be it likewise enacted,* That the former act made for erecting pounds, passed in the seventh year of the late King George the first, and every part thereof, shall be made void and repealed

The former act relating to pounds repealed, (chap. 231.)



1729. by this act; any thing in the said former act contained to the contrary in any wise notwithstanding. (*d*)

Passed 10th May, 1729.—Recorded A. vol. II. page 359.

(*d*) See chap. 56, (ante. pa. 13,) and the notes subjoined thereto, pa. 14 and 15; and post. chap. 1078, and the act concerning strays, passed April 13th, 1807, (post. chap. 2865.) For the existing laws respecting swine, see ante. pa. 70, chap. 158, next following, and chap. 303.

### CHAPTER CCCIII.

*A SUPPLEMENT to the act, entitled An Act to prevent swine running at large.*

WHEREAS by the said act, the relief provided for persons suffering by hogs trespassing in their fields or inclosures is limited to the extent of fourteen miles from the navigable parts of the river Delaware: Now, forasmuch as the country is become more populous, and it appears necessary to provide the same remedy for the inhabitants living in the other parts of this province: *Therefore be it enacted*, That the same penalties, rules and orders, enacted and directed to be observed by the aforesaid act within fourteen miles of the navigable parts of Delaware river, shall, within one month after the publication hereof, be in force, and extended throughout the province of Pennsylvania, as fully and amply as if the same act were again herein repeated and enacted; any limitation in the aforesaid act, for preventing swine running at large, to the contrary in any wise notwithstanding.

Former act extended throughout the province. Ante. pa. 70, and the notes thereto subjoined. See also the notes ante. p. 14 and 15

Passed 10th May, 1729.—Recorded A. vol. II. page 361.

### CHAPTER CCCVI.

*An ACT for erecting the upper parts of the province of Pennsylvania, lying towards Susquehanna, Conestogoe, Donegal, &c. into a county. (c)*

WHEREAS a great number of the inhabitants of the upper parts of Chester county have, by their petition humbly represented to the Governor and Assembly of this province, the great hardships they lie under, by being at so great a distance from the town of Chester, where the courts of justice are held, and the public offices kept:

(*c*) For a reference to the various acts respecting the borough of Lancaster, see chap. 748, chap. 1168, chap. 1617; and respecting the barracks in Lancaster, see chap. 1492.

For a reference to the various acts

respecting Chester county, see chap. 890, and the proper title in the index to this edition. For the act erecting a part of Chester into Delaware county, see chap. 1432. (*Note to former edition.*)

and how hard and difficult it is for the sober and quiet inhabitants of that part of the county, to secure themselves against the thefts and abuses almost daily committed upon them by idle and dissolute persons, who resort to the remote parts of the province, and, by reason of the great distance from a court or prison, do frequently find means of making their escape: For the removing which inconvenience, and relief of the said inhabitants, *Be it enacted*, That all and singular the lands within the province of Pennsylvania, lying to the northward of Octoraro creek, and to the westward of a line of marked trees, running from the north branch of the said Octoraro creek, northeasterly to the river Schuylkill, be erected into a county, and the same is hereby erected into a county, named, and from henceforth to be called, Lancaster county; and the said Octoraro creek, the line of marked trees, and the river Schuylkill aforesaid, shall be the boundary line or division between the said county and the counties of Chester and Philadelphia.

1729.  
Boundaries  
of the county  
of Lancaster.

II. *And be it further enacted*, That the said county of Lancaster shall have and enjoy all and singular the jurisdictions, powers, rights, liberties, privileges and immunities whatsoever, which any other county within the province of Pennsylvania doth, may or ought to enjoy, by any charter of privileges, or the laws of this province, or by any other ways or means whatsoever, [excepting only in the number of Representatives to serve in the General Assembly of this province; in which case, *It is hereby provided and enacted*, That, until it shall be otherwise ordered by the Governor and Assembly of this province, the freemen and inhabitants of the said county, qualified by the laws of this province to elect, shall annually meet at or near the court-house of the said county, at the same time the other counties of this province shall meet for such like purpose, or at such place where the courts shall be held, until such court-house shall be erected, and there proceed to choose inspectors, and to elect four Representatives or Delegates to serve them in Assembly, in the same manner, as by the said charter and laws of this province is directed; which said four Representatives, when so chosen, shall be members of the General Assembly of Pennsylvania, and sit and act as such, as fully and freely as any of the Representatives for the other counties within this province, do, may, can, or ought to do.]

The inhabitants  
thereof to  
elect four  
Representa-  
tives, &c.

Passed 10th May, 1729.—Recorded A. vol. II. page 366. (f)

(f) That part of the second section, between crotchets, and the remaining five sections, are entirely obsolete. As in all other acts for the erection or division of counties, they consist merely of temporary arrangements, and certain specified matters to be immediately carried into effect—as, the collection of taxes already assessed by the officers of the original county—the time of holding the courts—the appointment of trustees to build a court house and prison, and levying taxes to defray the expenses thereof—and providing for the continuance of existing suits.

The boundaries of the county of Lancaster have, by the operation of several laws erecting new counties, been of course materially altered; and may be ascertained by the following references.

York county, August 19th, 1749, (post. chap. 377.)

Cumberland, January 27th, 1749-50, (post. chap. 380.)

Berks, March 11th, 1752, (post. chap. 392.)

Northumberland, March 21st, 1772, (post. chap. 644.)

Dauphin, March 4th, 1785, (post. chap. 1125.)



1729.

Persons were appointed, by act of March 11th, 1752—and February 18th, 1769, to run the boundary lines of *Lancaster, Cumberland and Berks*, (chap. 593, obsolete)—and between the counties of *Chester, Lancaster and Berks*, by act of April 17th, 1795, (chap. 837, also obsolete.) See the record of these acts, referred to, under the titles, at the beginning of the volume, to which they belong.

By the existing constitution, the General Assembly consists of a Senate and House of Representatives—the Representatives to be chosen annually, in each county—the Senators are chosen for four years.

By the last enumeration, it was found that the county of Lancaster contained nine thousand, five hundred and sixty two taxable inhabitants—and by the apportionment of representation, made in pursuance thereof, by an act passed March 21st, 1808, (post. chap. 2931,) this county elects two Senators, and six Representatives.

By the judiciary act of Feb'y 24th, 1806, this county, with York and Dauphin, composes the second district; and the courts are held on the third Monday of the months of January, April, August and November, each term to continue two weeks. And by act of March 10th, 1810, the Court of Quarter Sessions may be continued during the whole of the first week of the term.

By act of March 11th, 1809, Lancaster, York, Berks and Dauphin compose the Lancaster District of the Supreme Court, and the term thereof commences annually, on the third Monday in May, to continue two weeks, if necessary.

There are fourteen Election Districts in the county of Lancaster.

Four established by act of September, 1785, (chap. 1164.)

The fifth, by act of April 15th, 1795, (chap. 1826.)

The sixth, by act of March 31st, 1797, (chap. 1933.)

The seventh, by act of April 8th, 1799, (chap. 2050.)

The eighth, by act of February 27th, 1801, (chap. 2199.)

The ninth, by act of April 2d, 1802, (chap. 2269.)

The tenth, by act of January 8th, 1805, (chap. 2518.)

The eleventh, by act of April 4th, 1805, (chap. 2599.)

The twelfth, by act of April 11th, 1807, (chap. 2856.)

The thirteenth, by act of March 28th, 1808, (chap. 2972.)

The fourteenth, by act of March 20th, 1810.

The places of holding elections, in the different districts, have, in several of them, been from time to time, changed; and the index will point out the particulars.

March 4th, 1763, (chap. 498,) an act passed for "erecting a house of correction in the county of Lancaster. And—

February 27th, 1798, an act for the erection of a house of employment, and support of the poor, (chap. 1960.)—Supplements thereto February 9th, 1799, (chap. 2006,) and January 30th, 1804, (chap. 2405, by which the directors of the poor are empowered to bind out apprentices,) and a further supplement, March 31st, 1807, (chap. 2786, respecting the assessment and collection of taxes for its support, and the property of deceased paupers.)

The first charter of the Borough of Lancaster, was granted, by Proprietary Patent, May 1st, 1752.

Re-established, June 19th, 1777, (chap. 748.)

The fairs to be held 1st Thursday in June, annually—act of March 19th, 1807, (chap. 2776.)

Divided into two Election Wards, April 2d, 1804, (chap. 2481.)

Two constables to be elected for the Borough,—March 2d, 1804, (chap. 2540.)

An act for regulating the buildings, keeping in repair the streets, lanes, alleys, and highways, in the Borough of Lancaster, and for other purposes therein mentioned,—January 22d, 1774, (chap. 687.)

An act for establishing a nightly watch, providing lamps, and supporting pumps for public use, in the Borough,—April 4th, 1792, (chap. 1617.)

The Seat of Government removed to Lancaster, by act of April 3d, 1799, (chap. 2037.)

Removed from thence to Harrisburg in Dauphin County, in October, 1812, by the act of February 21st, 1810.

# ACTS

OF THE

## General Assembly of Pennsylvania.

Passed at a Session, which commenced October 14th, 1729,  
and ended August 15th, 1730.

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PATRICK GORDON, LIEUTENANT-GOVERNOR.

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1729-30.

### CHAPTER CCCVIII.

*An ACT for regulating pedlars, vendues, &c. (g)*

VII. *PROVIDED* always, and it is hereby further enacted, That nothing herein contained shall extend, or be construed to extend, to hinder any Sheriff, Constable, or other officer, to sell and dispose of, by way of vendue, any goods, wares or merchandizes, taken in execution, and liable to be sold by order of law ; or to hinder any person or persons from selling or exposing to sale, by public vendue, or otherwise any goods or chattels of any kind whatsoever, taken and distrained for rent being in arrear ; or to prohibit any lawful executor or executors, administrator or administrators, to expose to sale, by way of public auction, vendue or otherwise, any goods or chattels, which were of their respective testator or intestates ; but that all and every such person or persons may do there-

Judicial officers, executors, &c. may sell by public auction.

(g) By chap. 478, post. the regulations that were contained in the 5th section of the act in the text, respecting lotteries, are repealed and supplied. By chap. 693, so much of the act in the text as related to the prohibiting the sale of books within the city of Philadelphia, was repealed. By chap. 732, it is declared, that all pedlars, hawkers and petty chapmen shall be included in that act, which directs, among other things, the mode of obtaining tavern and other licences. By chap. 859, persons capable of bearing arms were prohibited, under a penalty, from being hawkers and pedlars, during the late

war ; and so much of the act in the text, as relates to public vendues, was repealed and supplied. By an act of the 30th of March, 1784, (chap. 1079,) the same provision is made, as far as it relates to pedlars, hawkers, and petty chapmen. See also the last law on the subject, (chap. 2027.)

The regulations respecting lotteries, vendues and pedlars, being all that were contained in the act, the whole has thus, at several periods, been repealed and supplied, except the 7th section, which, though merely declaratory of the previous law, is here inserted. (*Note to former edition.*)



1729-30. in as they might have done before the making of this act, any thing herein contained to the contrary notwithstanding.

Passed 14th February, 1729-30.—Recorded A. vol. II. page 382.

## CHAPTER CCCXI.

**A SUPPLEMENT** to the act, entitled *An Act for preventing clandestine marriages.* (h)

**WHEREAS** the good intention of an act of Assembly of this province, entitled *An Act for preventing clandestine marriages*, hath been very much eluded, by reason that no proper penalty is by the said law imposed upon the Justice of Peace, or other persons, marrying or joining in marriage any persons contrary to the intent and meaning of the said act : For the remedying whereof, *Be it enacted*, That no Justice of the Peace shall subscribe his name to the publication of any marriage within this province, intended to be had between any persons whatsoever, unless one of the persons, at least, live in the county where such Justice dwells, and unless such Justice shall likewise have first produced to him a certificate of the consent of the parent or parents, guardian or guardians, master or mistress of the persons, whose names or banns are to be so published, if either of the parties be under the age of twenty-one years, or under the tuition of their parents, or be indented servants, if such parent, guardian, master or mistress live within this province, or can be consulted with ; and also that no person or persons, of what character or degree soever he be, presume to publish the banns of matrimony, or intentions of marriage, between any person or persons, in any church, chapel, or other place of worship, within this province, unless one of the parties at least live in the town, county or city, where such publication shall be made, and unless the person or persons making or causing to be made such publication, shall have received such certificate of the consent of the parent, guardian, master or mistress, as is herein before directed, if the parties who ought to grant such certificate live within this province.

No marriage of non-residents, minors or servants, to be published without certificates, &c.

Penalty on Justices, clergymen, &c. acting contrary to the directions of this act.

**II.** And if any Justice of the Peace, clergyman, minister, or other person, shall take upon him or them to join in marriage any person or persons, or if any Justice of the Peace shall be present at and subscribe his name as a witness to any marriage within this province, without such publication being first made as aforesaid, such Justice of Peace, clergyman, minister, or other person, taking upon him to sign, make, or cause to be made, any publication contrary to the directions of this act, or shall marry or join in marriage any person or persons not published, as in the aforesaid act of assembly, and by this act, is directed, every Justice of Peace, clergyman, minister, or other person, so offending, shall, for every such offence, forfeit the sum of fifty pounds, to be recovered in any Court of Record within this province, by bill, plaint or informa-

(h) For the original act, see ante. chap. 109 ; and the note there subjoined, page 21, 22.



tion, by the person or persons grieved, if they will sue for the same, 1729-30. wherein no essoin, protection or wager of law, nor any more than one imparlance, shall be allowed.

III. *Provided*, That nothing herein contained shall be deemed to extend to any person, who shall be married in the religious society to which they belong, so as notice be given to the parent or parents, guardian or guardians, masters or mistresses, of the person or persons so to be married, if such parent, guardian, master or mistress live within this province, at least twenty days before such marriage be solemnized; nor that this law shall extend to any person marrying by the authority of any lawful licence, so as such consent or approbation in writing of the parent or parents, guardian or guardians, masters or mistresses, as by this act is directed, be first had, and the same consent be certified in the body of the said licence; any thing herein, or in the aforesaid act of assembly, contained to the contrary notwithstanding.

Marrying in religious societies not forbid by this act, so as notice be given, &c.

Consent of parents, &c. to be certified in licences.

Passed 14th February, 1729-30.—Recorded A. vol. II. page 587.

## CHAPTER CCCXV.

*An ACT for the relief of insolvent debtors within the province of Pennsylvania.*

WHEREAS, in compassion to such unhappy persons, as, by losses and other misfortunes, have been rendered incapable to pay their debts, it is provided by an act of assembly of this government, that if any person be imprisoned for debt, or fines, within this province, and have no sufficient estate to satisfy the same, the debtor shall make satisfaction by servitude, according to the judgment of the court; but there being no provision made by the said law to compel the debtor to render any account of his or her estate, great abuses have been committed by persons claiming the benefit of that law, in concealing their estates, or making them over in trust, so that no clear discovery could be made of the same by the creditors; and it being found by experience that the service of the debtor has in no wise answered the end proposed in making the said law: Therefore, for the relief of such prisoners, who shall be willing to satisfy their creditors as far as they are able, *Be it enacted*, That if any person or persons, charged in execution for any sum or sums of money, not exceeding in the whole the sum of one hundred pounds, from and after the twenty-fifth day of March, in the year of our Lord one thousand seven hundred and thirty, shall be minded to deliver up to his, her or their creditors, all his, her or their effects, towards the satisfaction of the debts wherewith he, she or they stand charged, it shall and may be lawful for such prisoner to exhibit a petition to any of the courts of law within this province, from whence the process issued, upon which he, she or they was or were taken or charged in execution, certifying the cause or causes of his or their imprisonment, and an account of his, her or their whole real and personal estate, with the dates of the securities wherein any part of it consists, and the deeds or notes relating thereunto, and

Prisoner to exhibit a petition, &c.



1729-30.

Creditors to  
be summon-  
ed to appear.  
&c.

the names of the witnesses to the same, as far as his, her or their knowledge extends thereto: And upon such petition the court may, and is hereby required, by order or rule of court, to cause the prisoner to be brought up, and the several creditors, at whose suit, he she or they stand charged as aforesaid, and all other his or her creditors, that are or can be known to the court, to be summoned to appear personally, or by their attorney, in court, at a day to be appointed for that purpose; and upon the day of such appearance, if any of the creditors summoned refuse or neglect to appear, upon affidavit of the due service of such rule or order, or upon affidavit made that the creditor or creditors are not to be found, the court shall, in a summary way, examine into the matter of such petition, and hear what can or shall be alleged on either side, for or against the discharge of such prisoner; and upon such an examination, the court may and are hereby required to administer or tender to the prisoner an oath or affirmation, to the effect following:

The form of  
the prison-  
er's oath or  
affirmation.

"I, A. B. do solemnly (swear, in the presence of Almighty God) or (sincerely and truly declare and affirm) that the account by me delivered into this honourable court, in my petition to this court, doth contain a full and true account of all my real and personal estate, debts, credits and effects whatsoever, which I, or any in trust for me, have, or at the time of my imprisonment had, or am, or was, in any respect entitled to; in possession, remainder or reversion (except the wearing apparel and bedding for me or my family, and the tools or instruments of my trade or calling, not exceeding five pounds in value in the whole) and that I have not, at any time since my imprisonment, or before, directly or indirectly, sold, leased, or assigned, or otherwise disposed, or made over in trust, for myself or otherwise, other than as mentioned in such account, any part of my lands, estate, goods, stock, money, debts or other real or personal estate, whereby to have or expect any benefit or profit to myself, or to defraud any of my creditors, to whom I am indebted."

Prisoner to  
assign his ef-  
fects to his  
creditors,  
&c.

II. And in case the prisoner shall in open court take the said oath or affirmation, and upon such examination, and his or her taking the said oath or affirmation, the creditors shall be satisfied with the truth thereof, the court may immediately order the lands, goods and effects, contained in such account, or so much of them as may be sufficient to satisfy the debts wherewith he or she is or shall be charged, together with costs of suit, and the fees due to the keeper of the gaol or prison from which the prisoner was brought, to be, by a short indorsement on the back of such petition, signed by the prisoner, assigned to the creditors, or one or more of them, in trust for the rest of them, or to some proper person, to be by the said court appointed, in trust for all the creditors: and by such assignment the estate, interest and property of the lands, goods, debts and effects, so assigned, shall be vested in the person or persons to whom such assignment is or shall be made, who may take possession of, or sue for the same, in his or their own name or names, in like manner as Assignees of Commissioners of bankrupts: to which suit no release of the prisoner, his or her executors or administrators, or any trustee for him or her, subsequent to such assignment, shall be any bar. And immediately upon such assignment executed, the said pri-

And upon  
such assign-  
ment to be  
discharged.



soner shall be discharged out of custody, by order of court : and such order shall be a sufficient warrant to the Sheriff, gaoler or keeper of such prison, to discharge the said prisoner, if detained for the causes mentioned in such petition, and no other, and he is hereby required to discharge and set him or her at liberty forthwith, without fee ; nor shall such Sheriff or gaoler be liable to any action of escape, or other suit or information, upon that account : And the person or persons to whom the said effects shall be assigned, paying the fees to the gaoler or keeper of the prison, in whose custody the party discharged was, shall and are hereby required to divide the effects so assigned among the creditors, and all the persons for whom they shall be entrusted, in proportion to their respective debts. But in case the person or persons, at whose suit such prisoner was charged in execution, or any other creditor, shall not be satisfied with the truth of such oath or affirmation, but shall desire further time to inform himself of the matters contained therein, the said court may and shall remand the said prisoner, and direct the said prisoner, and the person or persons dissatisfied with such oath or affirmation, to appear at another day, to be appointed by the said court, some time within the term next following the time of such examination ; and if at such second day, so to be appointed, the creditor or creditors dissatisfied with such oath or affirmation shall make default in appearing, or in case he or they shall appear, but shall be unable to discover any estate or effects of the prisoner, omitted in such his or her petition, or to shew any probability of his or her having been forsworn, or to have declared falsely in the said oath or affirmation, then the said court shall immediately cause the said prisoner to be discharged, upon such assignment of his or her effects, in manner as aforesaid, unless such creditor or creditors do insist upon his or her being detained in prison, and do agree, by writing under his hand, to pay and allow any sum of money that shall be assessed by the said court, not exceeding three shillings per week, unto the said prisoner, to be paid the second day of every week, so long as he or she shall continue in prison at his, her or their suit ; on failure of the payment of which weekly sum, at any time, the said prisoner shall forthwith, upon application to the court, or to any three Justices of the said court in the vacation, be discharged by such order as aforesaid. But in case the said prisoner shall refuse to take the said oath or affirmation, or, having taken the same, shall be detected of falsity therein, he or she shall be presently remanded.

III. *And be it further enacted,* That no person to be discharged by this act shall any time hereafter be imprisoned, by reason of any judgment or decree obtained for payment of money only, or for any debt, damages, contempts, costs, sum or sums of money, contracted, occurred, occasioned, owing, or growing due, before the time of his or her discharge ; but that upon every arrest upon every such judgment or decree, or for such debts, damages or contempts, costs, sum and sums of money, it shall and may be lawful for any Judge of the court where the process issued, upon shewing the duplicate of such prisoner's discharge or discharges, to release and discharge out of custody such prisoner or prisoners as aforesaid ;

1729-30.

Effects to be divided among the creditors.

Creditors not being satisfied with the oath, &c. the court may remand the prisoner, &c.

Creditors insisting on the prisoner's being detained, to pay, &c. towards his maintenance.

No person discharged by this act, to be hereafter imprisoned for any debt, &c. due before his discharge.



1729-30.

and the Judge is hereby empowered so to do, so as every such prisoner or prisoners, arrested or detained upon execution, or mesne process, do give a warrant of attorney to appear to every such action, and to plead thereunto.

Justices,  
Sheriffs, &c.  
may plead  
the general  
issue, &c.

IV. *And be it further enacted*, That if any action of escape, or any suit or action be brought against any Justice or Justices of the Peace, Sheriff, gaoler or keeper of any prison, for performing their office in pursuance of this act, they may plead the general issue, and give this act in evidence; and if the plaintiff be non-suited, or discontinue his action, or verdict pass against him, or judgment upon demurrer, the defendant shall have treble costs.

V. *Provided*, That the discharge of any person, by virtue of this act, shall not acquit any other person from such debt, sum or sums of money, or any part thereof: but that all others shall be answerable for the same, in such manner as before the passing of this act.

VI. *And provided*, That this act shall not extend to discharge any person out of prison, who shall stand chargeable at the suit of the crown only.

Judgment to  
stand good  
against what  
the prisoners  
may hereaf-  
ter possess,  
&c.

VII. *Provided always, and be it enacted*, That notwithstanding the discharge of the person of such prisoner or prisoners as aforesaid, all and every debt and debts, due or owing from the said prisoner or prisoners, and all and every judgment or judgments had and taken, and decree obtained against him or her, shall stand and be good and effectual in the law, to all intents and purposes, against the lands, tenements, hereditaments, goods and chattels of the said prisoner, so discharged as aforesaid, which he, she or they, or any other person or persons in trust for him, her or them, at the time of such discharge, hath or have, or at any time hereafter, shall or may be any ways seized or possessed of, interested in, or entitled to, either in law or equity, except his, her or their wearing apparel, bedding for his, her or their families, and working tools and implements, necessary for his, her or their occupations, not exceeding the value of five pounds, in the whole; and it shall and may be lawful to and for such creditor or creditors of such prisoner or prisoners, so discharged as aforesaid, his, her or their executors or administrators, to take out a new execution against the lands, tenements, hereditaments, goods and chattels of such prisoner or prisoners, (except as are before excepted,) for the satisfaction of his, her or their debts, in such sort, manner and form, as he, she or they might have done, if the person or persons of such prisoner or prisoners had never been taken in execution, any act, statute, law or custom, to the contrary in any wise notwithstanding.

And the cre-  
ditors may  
take out a  
new execu-  
tion, &c.

Prisoner con-  
victed of per-  
jury, shall  
suffer, &c.

VIII. *Provided also, and be it further enacted*, That if any such person, who shall take such oath or affirmation as aforesaid, shall, upon any indictment for perjury, in any matter or particular, contained in the said oath or affirmation, be convicted, by his or her own confession, or by verdict of twelve men, the persons so convicted shall suffer all the pains and forfeitures which may by law be inflicted on any person convicted of wilful perjury; and shall likewise be liable to be taken on any process *de novo*, and charged in execution for the said debt, in the same manner, as if he or she had never been discharged or taken in execution before, and shall never after have the benefit of this act.

**IX.** *Provided also, and be it further enacted,* That if the effects so assigned shall not extend to satisfy the whole debts due to the creditors of the person or persons so discharged, and the fees due to the gaoler, there shall be an abatement in proportion, and such gaoler shall come in as a creditor, for what shall be then due to him for his fees, in proportion with the other creditors. 1729-30.

Gaoler to come in as creditor for his fees.

**X.** *And be it further enacted,* That where there are mutual debts between the debtor or debtors, and his, her or their creditors, or if either party sue or be sued, as executor or administrator, where there are mutual debts between the testator or intestate and either party, one debt may be set against the other, and such matter may be given in evidence upon the general issue, or pleaded in bar, as the nature of the case shall require: so as at the time of the pleading the general issue, where any such debt of the plaintiff, his testator or intestate, is intended to be insisted on in evidence, notice shall be given of the particular sum or debt so intended to be insisted on, and upon what account, it became due, or otherwise such matter shall not be allowed in evidence upon such general issue.

Where there are mutual debts, one may be set against the other, &c. Ante. pa. 51.

**XI.** *Provided,* That where any rent shall be due from any prisoner or prisoners, at the time of his or their respective discharges, no goods or chattels, then lying or being in or upon the respective tenements or lands so in lease, or liable to be distrained, shall be removed or disposed of, without the consent of the landlord or person to whom the rent is due, until the same, not exceeding one year's rent, be paid or satisfied; and that the landlord may use all lawful ways for the having and recovering his rent, so as the same exceed not one year's rent, by distress or otherwise, as he might have had, or could have done, before the making of this act, any thing herein contained to the contrary in any wise notwithstanding.

Landlords may recover one year's rent, as before this act. See chap. 645, sect. 4.

**XII.** *And provided also,* That this act shall not bar any absent or distant creditor, who had not notice of the prisoner's application to the court as aforesaid.

**XIII.** And whereas, by an act of Assembly of this province, entitled *An Act for better determining debts and demands under forty shillings*, power is given to any one Justice of the Peace to hear and determine any debt or demand under forty shillings, and, upon judgment given, to award execution against the body, and goods or effects of the defendant; in pursuance of the execution of which law, many poor persons have been taken and imprisoned a long time, for very small sums of money, to the utter ruin of their families, and without any real benefit to the creditors; and forasmuch as it will be a very great hardship and charge upon a poor prisoner, confined for a small debt, to oblige him or her to apply to be discharged in the manner directed by this act, for persons imprisoned for a greater sum: Therefore, for the ease of such poor persons, *Be it enacted,* That where any person or persons shall be charged in execution for any sum of money, not exceeding in the whole the sum of forty shillings, besides costs of suit, such person or persons may, by petition, apply to any two Justices of the Peace of the county or city where he or she is imprisoned, and therein set forth the truth of his or her case, with a true account of his or her whole effects; which Justices shall thereupon give reasonable notice to the plaintiff

How prisoners for debt under forty shillings may be relieved.



1729-30.

or creditor to appear before them at a certain day and place, to shew if that the said debtor or debtors have some effects that he or she will not discover and yield up, for payment of the debt and costs : at which day the defendant or defendants shall make such oath or affirmation as, in the case of other debtors, is by this act directed to be taken, the words five pounds, in the said oath, only excepted, and the words twenty shillings, in the case of a single person, and the words fifty shillings in the case of a married person, to be taken or inserted instead thereof : And if the plaintiffs or creditors shall, upon notice given as aforesaid, neglect or refuse to appear, or appearing, and not making out to the said Justices that the debtor hath omitted to discover some of his or her effects in his or her petition, or to shew any probability of his or her being forsworn in the said oath or affirmation, then the said Justices shall immediately cause the said prisoner to be discharged, upon his or her making an assignment to the plaintiff, on the said petition, of all the effects contained therein, the wearing apparel, to the value of twenty shillings, if a single person, and to the value of fifty shillings, if a married person, only excepted ; and the persons of the debtor or debtors shall never after be arrested for the same debt or costs.

See chap.  
1505, sect. 26,  
and chap.  
1625.

Sheriff, &c.  
shall not  
carry per-  
sons arrested  
to any tav-  
ern, &c.  
without  
their con-  
sent ;

nor demand  
extravagant  
fees, &c.

Nor shall  
keep persons  
arrested in  
any public or  
private house  
above twen-  
ty days, &c.

Justices to  
make orders  
for regulat-  
ing expenses,  
&c.

XIV. And whereas many persons may suffer by the oppression and exactions of gaolers, and other inferior officers, in the execution of process for debt : For prevention whereof, *Be it further enacted*, That no Sheriff, Under-Sheriff, Bailiffs, or other officer or minister whatsoever, shall, at any time or times hereafter, convey or carry, or cause to be conveyed or carried, any person or persons by him or them arrested, or being in his or their custody, by virtue or colour of any writ, process or warrant, to any tavern, alehouse, or other public victualling or drinking-house, or to the private house of any such officer, without the voluntary consent of the person so taken or arrested ; nor charge, demand, take or receive, or cause to be demanded, taken or received, directly or indirectly, any other or greater sum or sums of money, than is or shall be by law allowed to be taken or demanded, for such arrest, taking, detaining, or waiting till the person or persons, so arrested or in custody, shall have given in an appearance or bail, as the case shall require, or agreed with the person or persons at whose suit or prosecution he, she or they shall be taken or arrested, or until he, she or they shall be sent to the proper gaol belonging to the county, city, town or place where such arrest or taking shall be ; nor shall keep the person or persons, so taken or arrested, in any tavern, alehouse, or other public victualling-house, or private house of any officer, with or without the consent of the persons so arrested, above the space of twenty days ; nor shall exact or take any reward, gratuity, or money, for keeping the person or persons so arrested or in custody out of gaol or prison : nor shall take or receive any other or greater sum or sums of money, for one or more night's lodging, or for a day's diet, or other expenses, than what shall be allowed as reasonable in such cases, by some order or orders to be made by the Justices of the respective Courts of Common Pleas within this province, at some court to be held for such county, city, town, or place, where such arrest or taking shall be, who are hereby autho-

rized and required, with all convenient expedition, to make some standing order or orders for ascertaining such expenses within their respective counties or cities. 1729-30.

**XV.** *And be it further enacted,* That every Sheriff, Under-Sheriff, gaoler, keeper of any prison or gaol, or other person or persons whatsoever, to whose custody or keeping any one so arrested or taken shall be committed on any pretence, shall permit and suffer him, her or them, so arrested or taken, at his, her or their will and pleasure, to send for and have any beer, ale, victuals, or other necessary food, from what place they please; and also to have and use such bedding, linen and other things, as he, she or they shall think fit, without purloining or detaining the same, or any part thereof, or enforcing or requiring him, her or them, to pay for the having or using thereof, or putting any manner of restraint or difficulty upon him, her or them, in using thereof, or relating thereto.

Officers shall permit prisoners to send for necessities where they please.

See chap. 1506, sect. 25, and chap. 1625.

**XVI.** *And be it further enacted,* That no fees shall be taken by any gaoler, or keeper of any gaol or prison, within this province, for any prisoner or prisoners commitment or coming into gaol, or chamber-rent there, or discharge from thence, or other expenses, than what shall be allowed by law, until such fees shall be settled and established by the Justices or Judges of the respective County Courts, and other Courts of Record, within this province, for and in respect of the counties and courts to which they belong, who are hereby directed, empowered and required, to settle and establish the same as soon as conveniently may be: And tables shall be made of the respective orders, rules and fees, so settled and established, and signed by the Justices or Judges of the respective County Courts, Courts of General Quarter Sessions of the Peace, and other Courts of Record, for the respective gaols within their respective jurisdictions; and signed by the Mayor, Recorder and Aldermen, for and in respect of the Courts of Record held before the Mayor, Recorder and Aldermen of the city of Philadelphia; which rules, orders and fees, may from time to time be enlarged, reformed, or altered and amended, as occasion shall require, by the Judges of the Supreme Court, by rules and orders of the said court, to be signed by the Judges of the same: and duplicates shall be transmitted to the respective County Courts, and other Courts of Record, for which they are made, to be entered of record and enrolled, without any fee to be taken for the enrolment thereof.

Justices shall settle tables of fees, &c.

Which may be altered and amended, and shall be entered on record.

See chap. 1505, sect. 26, chap. 1625 and 1852.

**XVII.** *And be it further enacted,* That the several Courts of Common Pleas, and other Courts of Record, in the several counties and cities of this province, shall, at every time of the sitting or meeting of such court or courts, enquire whether such tables of fees, and such rules as aforesaid, be hung up, and remain public and easy to be resorted to, in the several prisons to the said courts respectively belonging, and whether the same be duly complied with and observed, and cause eight days notice to be given to the prisoners in the said prison of the time appointed for such enquiry; and shall inform themselves, touching the same, in the best manner they can, and supply and redress whatever they find neglected or transgressed: And that the Judges of the Courts of Oyer and Terminer and General Gaol Delivery shall likewise make enquiry of

Courts to enquire concerning the tables of fees, &c.



1729-30.

the matters aforesaid, at all such Courts and Sessions of Gaol Delivery within this province, for and in respect of the gaols and prisons, within their respective jurisdictions; and shall expressly give it in charge to the Grand Jury to enquire concerning the same.

Now gaol-  
ers, &c. guilty of extortion, shall be punished.

XVIII. And, for the more speedy punishing gaolers, bailiffs, and others, employed in the execution of process, for extortions, or other abuses in their respective offices and places, *Be it further enacted*, That upon petition of any prisoner or person, being or having been under arrest or in custody, complaining of any exaction or extortion by any gaoler, bailiff, or other officer or person, employed in the keeping or taking care of any gaol or prison, or the arresting or apprehending of any person or persons, by virtue of any process or warrant, or any other abuse whatsoever, committed or done in their respective offices or places, unto any of his Majesty's Courts of Record within this province, from whence such process issued, or under whose power such gaol or prison is; or to any two Justices of such court, in the time of vacation; or to the Judges of the Supreme Court, or any of them, in their respective Sessions of Oyer and Terminer or General Gaol Delivery; it shall and may be lawful for the said court, Justices or Judges, to hear and determine the same in a summary way, and to make such order thereupon, for redressing such abuse, and punishing of such officer or person complained of, and making reparation to the party or parties injured, as they shall think just, together with the full costs of such complaint; and all orders and determinations which shall be made by the said courts, or of the said Justices or Judges respectively, in such summary way as herein prescribed, shall have the same effect, force and virtue, to all intents and purposes, as any other orders of the said respective courts; and obedience thereunto may be enforced, either by attachments ordered by the said respective courts, or by attachments to be issued under the seal of the said courts, by direction of the Justice or Judge making such order.

No Sheriff, Under-Sheriff or gaoler, to keep any tavern, &c. See an act passed April 4th, 1807, (chap. 2805, sect. 5.)

XIX. And for the preventing prisoners being imposed upon, by being under a necessity of spending their money in prisons, where strong liquors are sold, *Be it enacted*, That no gaoler, or keeper of any gaol, or any Sheriff, or Under-sheriff, having the care or keeping of any gaol or prison within the Province of Pennsylvania, shall keep, or suffer to be kept, any tavern, public house or alehouse, or shall utter or sell to any person or persons under arrest, or in prison, any wine, rum, beer, ale, cyder, punch, or any other strong liquors, other than what shall be allowed by the Justices as aforesaid for a day's diet or expenses, by such order to be made as aforesaid on pain of being removed from his or their office or offices of Sheriff, Under-sheriff, or gaoler, upon complaint made, to be heard and determined, upon petition, in a summary way as aforesaid, before the Justices in the respective Courts of Common Pleas for the county to which such gaoler, Sheriff or Under-sheriff, having the keeping of any gaol, does belong.

No Sheriff to continue in his office above three years.

XX. And for the more effectual preventing oppressions to his Majesty's subjects within this province, *Be it further enacted*, That no Sheriff within this province shall continue in his office of Sheriff, or occupy the said office, above three years; and that no man



who hath been Sheriff or Under-sheriff of any county by the space of three years, shall be chosen Sheriff of that county again within three years next ensuing, upon pain of forfeiting two hundred pounds, by him who shall occupy his office contrary to the effect and intent of this act. 1729-30. See the existing constitution, art. 6, sect. 1.

**XXI.** *And be it further enacted,* That one act of General Assembly of this province, entitled *An act about arrests, and making debtors pay by servitude*, be, and is hereby repealed and made void. Chap. 153.

Passed 14th February, 1729-30.—Recorded A. vol. II. page 397. (*i*)

(*i*) By the 28th section of the second chapter of the constitution of 1776, it is declared, "That the person of a debtor, where there is not a strong presumption of fraud, shall not be continued in prison, after delivering up, *bona fide* all his estate, real and personal, for the use of his creditors, in such manner as shall be hereafter regulated by law." The spirit of this humane provision is expressed in the following analogous terms, by the 16th section of the 9th article of the existing constitution:—"The person of a debtor, where there is not strong presumption of fraud, shall not be continued in prison, after delivering up his estate, for the benefit of his creditors, in such manner as shall be prescribed by law." The legislature, by various successive amendments, have gone far towards effectuating these constitutional injunctions. Thus, by chap. 321, post. it was declared, that persons unmarried, and under the age of forty years, having no charge of children, and being indebted to one or more persons in any sum not exceeding, in the whole, twenty pounds, should not have the benefit of the insolvent law; but, nevertheless, that such debtors, under arrest and imprisonment, having exhibited to the proper court, an account of their effects, a list of the names of their creditors, and a statement of their debts, proving by petition their inability to pay the debts for which they are imprisoned, making an assignment of their effects in trust, &c. and signifying their willingness to make satisfaction for the residue by servitude, shall be discharged, agreeably to the previous act, (chap. 153.) It was, likewise, provided, that persons who had not resided here for two years, next, before their imprisonment, should be excluded from the benefit of the insolvent law; that where plaintiffs refused to give security for paying a weekly allowance to the defendants, and that the defendants and their families should not become chargeable to the town or county, the action should be discontinued, and the parties discharged; and

that where the debt was under forty shillings, any two Magistrates might, on application, relieve the party imprisoned, by judging him to make satisfaction by servitude.

[The act about arrests, and making debtors pay by servitude, after having been repealed by the act in the text, and revived by the act of February 6th, 1730, 1731, was again repealed by an act passed March 20th, 1810. It is presumed, that all the subsequent provisions founded thereon, fall with the original act, having been long obsolete in practice, and that part of the above recited act, respecting the weekly allowance to debtors, is supplied and repealed, by an act of April 7th, 1807, (*infra*, chap. 2824,) and by the operation of subsequent acts, all of that act (321) has become obsolete.]

By chap. 518, post. it was provided, that persons charged in execution for any sums, not exceeding, in the whole, one hundred and fifty pounds to any one person, should be entitled to the benefit of the insolvent laws; and that a debtor should be discharged, after an examination on oath or affirmation, unless the creditor agreed, in writing, to make a weekly allowance, not exceeding the sums mentioned in the act.—And by (chap. 531,) it was provided, that no person indebted to any one creditor in a sum exceeding one hundred and fifty pounds, should be entitled to the benefit of the insolvent laws, although charged in execution for any other sum, not exceeding one hundred and fifty pounds. [See now the act of April 3d, 1794 referred to *infra*, by which chap. 531 is virtually repealed.]

By chap. 691, it is enacted, that where insolvent debtors shall assign their estates in trust, for the use of their creditors, and the trustees neglect or refuse to perform the trust, the creditors may petition the proper court; and on their making the necessary proof, the court shall appoint commissioners to audit and adjust the accounts of the trustees, their executors or administrators. The act likewise prescribes the duties and powers of such



1729-30. commissioners, and allows an appeal from their decision to the court.

By an act of the 28th of February, 1787, (chap. 1250,) it is provided, that persons committed until the restoration of stolen goods, or payment of the value, &c. may be discharged by the proper court, if they are found unable to pay; but reasonable previous notice must be given to the owner of the stolen goods, or his attorney. Debtors in execution for rent, are, likewise, admitted to the benefit of the insolvent laws; but this shall not affect the landlord's remedy by distress. Insolvent debtors shall not be remanded on a weekly allowance, except in case of a strong presumption of fraud.

By an act of the 27th of March, 1789, (chap. 1400,) it is provided, that so much of the insolvent laws, as deprives persons of the benefit thereof, by reason of their non-residence for two years next before their imprisonment, shall be repealed, as against the plaintiffs at whose suits they are imprisoned, and so far as relates to the debts due to such plaintiffs, if the same shall not, in the whole, exceed one hundred pounds. Persons confined for thirty days in execution, or otherwise, for any debts, fines or forfeitures, none of which exceed five pounds, exclusive of costs, shall, upon application be discharged by the gaoler, and shall not be liable to be again imprisoned for the same cause.

By an act of the 4th of October, 1788, (chap. 1363,) it is provided, that persons imprisoned for taxes shall be admitted to the benefit of the laws respecting insolvent debtors. [But this seems to be confined to persons imprisoned under that act.]

By an act of the 27th of March, 1790, (chap. 1485,) it is provided, that insolvent debtors, remanded under a strong suspicion of fraud, may be discharged from confinement by the court in a reasonable time, not less than twelve months after being remanded.

By the same act it is provided, that an insolvent debtor, aged fifty years, or upwards, and married, or having a charge of children, may, on petition, have a certificate from the proper court, operating with regard to all previous debts, as a discharge both of his person, and property afterwards acquired, provided he is indebted to no one person more than twenty pounds; but no person shall be entitled twice to the benefit of the act.

By the same act it was provided, that no insolvent debtor should be discharged, unless at least fifteen days notice of the hearing on his petition for that purpose be given to his creditors; and

that where actions are depending, or judgments obtained against an insolvent debtor, by non-inhabitants of the state, he may be discharged from imprisonment, as to the same, on due notice being given to the attorney at law for the plaintiffs, or their attorney in fact, or known agent, although the creditors are not personally notified. [And, if the court shall think it reasonable and expedient, on application of the creditor, they may remand the debtor for a further time, to allow the creditors an opportunity to make enquiry relative to the estate and effects of such debtor.]

By an act of the 5th of April, 1790, (chap. 1505, sect. 26,) provision is made to reserve the building, heretofore appropriated as a house of correction, [in the city of Philadelphia,] for the exclusive reception and confinement of debtors, and persons committed to secure their attendance as witnesses.

By an act of the 23d of September, 1791, (chap. 1572, sect. 12,) it is declared, that persons confined for costs on a criminal prosecution shall have the benefit of the insolvent laws.

By an act of the 16th of February, 1792, (chap. 1594,) it is declared, that an insolvent debtor, who has been in gaol six months or more, next preceding the time of preferring his petition, but has not resided here two years before his imprisonment, and has not been proceeded against as a bankrupt, shall have the benefit of the insolvent laws, if it appear, to the satisfaction of the court, that he is actually arrested and confined on adversary process, and has made a full disclosure of his estate. All other persons in actual confinement, in actions founded on contract, for thirty days next preceding the time of preferring the petition, shall have the benefit of the insolvent laws, although not charged in execution.—It is proper here to remark, that the laws for the regulation of bankruptcy, (chap. 1172, 1264,) have expired by their own limitation; though the Commissioners have been allowed to perfect the business unfinished at the time of expiration, (chap. 1652, 1735.)

By an act of the 4th of April, 1792, (chap. 1625,) provision is made for establishing Inspectors of the debtor's apartment, and for furnishing necessities to such of the prisoners as cannot maintain themselves. It is also declared, that the Inspectors shall make an allowance of seven cents *per diem*, for food to each of such poor debtors, to be paid weekly by the plaintiffs, at whose suits they are confined; and on a plaintiff's neglect or refusal, to pay such allowance on every Monday, after ten days



notice from the Inspectors to him, or his attorney, or agent, the prisoner shall be discharged from his confinement. The same rules extend to the gaols of the respective counties, as well as to the gaol of the city and county of Philadelphia.

[That part of the above cited act, as respects the payment of the weekly allowance, is supplied and repealed by an act of 7th of April, 1807, (chap. 2824.)]

By an act of the 3d of April, 1794, (chap. 1713,) it is declared, that debtors may have the benefit of the insolvent laws, though their debts exceed one hundred and fifty pounds to one creditor. It is also provided, that in the cases of petitions presented to the Supreme Court, during April and September terms, for the discharge of insolvent debtors, the court may proceed to hear and determine the same, upon the petitioner's having given ten days notice to his creditors. [The terms of the Supreme Court are now altered, ante. page 148.]

A debtor in confinement, under a Magistrate's execution, presented his petition after the court had fixed the day for hearing insolvent debtors, and had adjourned; but the application was held to be too late. 1 Dallas, 142.—In a subsequent case it was declared to be the practice, that only those insolvent debtors should be discharged, who made application within the three first days of the term; and that the writ of execution must be returnable at the term, to which the application is made, and not to a subsequent term. *Ibid.* page 149.

How far a *cessio bonorum* and discharge of an insolvent debtor in a sister state, or a foreign country, will avail here, has been the subject of various adjudications in our courts. Dallas, 188, 229, 294, 366.

On a writ of error from the Common Pleas, it was adjudged in the Supreme Court, that a bond given by an insolvent debtor, before his discharge, and assigned afterwards, might be set off by the assignee, in an action brought against him by the obligor, for goods sold and delivered subsequent to the obligor's discharge. 1 Dallas, 225, 452. (*Notes to former edition, excepting such parts as are between crotchets.*)

The notes to the former edition, contain a full and clear view of the insolvent laws of the State. It remains only to add an act passed April 7th, 1807, (post. chap. 2824.)

Where any person confined for debt in any gaol of this commonwealth, shall

assign his or her property for the benefit of his or her creditors, the fees and charges of maintenance due the gaoler at the time of the discharge of the debtor, (being approved by the court,) shall have the priority, and be paid out of the property so assigned, previous to any distribution of the same. 1729-30.

It shall be the duty of the several courts of Common Pleas, at their first term in each and every year, to fix and order a daily allowance, for all such poor and insolvent debtors, as shall or may be confined in the prison of their respective county, during the year, and have not property to maintain themselves; and it shall be the duty of the plaintiff or plaintiffs, at whose suit any such debtor may be imprisoned, his or their agent or attorney, upon notice to him or them given by the keeper of the prison, to pay the said daily allowance at the prison, on every Monday morning, while the debtor continues in prison; on failure whereof, for the space of three days, the said debtor may apply to the Court of Common Pleas, if it be in session, or if not, then to a Judge of the same court, who upon enquiry, and finding the said debtor to be destitute of property for his support in prison, and failure of payment to have been made as aforesaid, shall forthwith discharge the said debtor from his imprisonment; *Provided*, always, that the said daily allowance shall not exceed the sum of fourteen cents.

So much of any law as is thereby altered or supplied, is repealed.

It has been held by the Judges of the Supreme Court, that the words "five pounds in value" in the insolvent debtors oath, refers to the value of the articles in 1729. MSS. Reports.

(The principle on which the foregoing decision rests, has, in a parallel case, been elaborately and casuistically considered by the learned Bishop Fleetwood, in his *Chronicon Preciosum*.)

One in declining circumstances, who makes conveyances to his children, to the prejudice of his creditors, is excluded from the benefit of the insolvent acts. MSS. Reports, Supreme Court.

The discharge of a debtor under the insolvent acts, is *prima facie* evidence of service of notices on the creditors, but not conclusive. MSS. Reports, Supreme Court.

A debtor, who has no property whatever, is nevertheless entitled to the benefit of the insolvent laws. 1 Binney, 462. And for decisions on the act of 1798, (now expired,) see 1 Binney, 462, 589.



# ACTS

OF THE

## General Assembly of Pennsylvania.

Passed at a Session which commenced October 14th, 1730,  
and ended February 6th, 1730-31.

1730-31.

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PATRICK GORDON, LIEUTENANT-GOVERNOR.

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### CHAPTER CCCXX.

*An ACT for the enabling religious societies of Protestants, within this province, to purchase lands for burying-grounds, churches, houses for worship, schools, &c. (k)*

**WHEREAS**, sundry religious societies of people of this province, professing the protestant religion, have, at their own respective costs and charges, purchased small pieces of land within the province of Pennsylvania, and thereon have erected churches, and other houses of religious worship, school-houses, and alms-houses, and inclosed part of the same lands for burying grounds: And whereas the said lands were purchased and paid for by the said respective societies in the name or names of persons, at that time being of, or professing themselves to be of the same religious persuasion with the societies who made use of the names of the said persons as trustees, for and in behalf of the said societies: And whereas some of the said trustees, or their heirs, having afterwards

(k) By the act for establishing the mode of incorporating associations for religious, literary and charitable purposes, (chap. 1536, sect. 5,) it is provided that the respective registers of wills shall, within six months after any will is presented for probate, notify any corporation to which any bequest shall be made in such will.

By an act of the 22d of April, 1794, (chap. 1747, sect. 21,) the corporation of the city of Philadelphia is empower-

ed to prohibit any future interments within such parts of the city of Philadelphia, wherein they shall judge such prohibition necessary, and to impose fines for the breach of the ordinance: And by sect. 22, authority was given for selling certain lots, heretofore conveyed to the corporation, in trust, for public burying-grounds, and purchasing other lots in more convenient situations for that purpose.

changed their opinions, and joined themselves to other religious societies of a different persuasion from the people by whom the said persons were at first entrusted, and upon pretext of their having the fee simple of the lands, so purchased in their names vested in them, have, contrary to the true intent and meaning of the first grant or gift, attempted (by granting away the said lands, houses of religious worship, and burying-grounds) to deprive the society of people in possession of the same, of the right and use of the said houses of worship, and burying-grounds, to the great disquiet and uneasiness of many of the good people of this province; and others, being entrusted in the like manner, may hereafter do the same: For remedy whereof, and for the better securing the several religious societies in the quiet and peaceable possession of their churches, houses of worship, school-houses and alms-houses, and burying-grounds, within this province: 1730-1.

II. *Be it enacted*, That all sales, gifts or grants, made of any lands or tenements within the province of Pennsylvania, to any person or persons, in trust, for sites of churches, houses of religious worship, schools, alm-houses, and for burying-grounds, or for any of them, shall be and are hereby ratified and confirmed to the person or persons to whom the same were sold, given or granted, their heirs and assigns, in trust nevertheless, and for the use of the respective religious societies, for whose use the same were at first sold, given, granted or purchased, according to the true intent and meaning of such gifts and grants; and that every sale, gift, grant or devise, of any such trustee or trustees, or any person or persons, in whose name or names the said lands for erecting churches, houses of religious worship, schools, alms-houses, or burying-grounds, within this province, were purchased, taken or accepted, or the heirs or assigns of such trustees, shall be and are hereby declared to be for the sole use, benefit and behoof of the said respective societies, who have been in the peaceable possession of the same for the space of twenty-one years, next before the tenth day of June, in the year of our Lord one thousand seven hundred and thirty, or for whose use the same were at first given, granted or devised, and no other. Sales, &c. of lands, for houses of worship, &c. confirmed.

III. *And be it further enacted*, That it shall and may be lawful to and for any religious society of Protestants, within this province, to purchase, take and receive, by gift, grant, or otherwise, for burying-grounds, erecting churches, houses of religious worship, schools and alms-houses, for any estate whatsoever, and to hold the same for the uses aforesaid, of the lord of the fee, by the accustomed rents. Religious societies may purchase for erecting houses of worship, &c.

IV. *Provided always, and be it further enacted*, That nothing in this act contained shall be deemed, taken or construed, to enable any of the said religious societies of people, or any person or persons whatsoever, in trust for them, or to their use, to purchase, take or receive, any lands or tenements, by gift, grant, or otherwise, for or towards the maintenance or support of the said churches, houses of worship, schools or alms-houses, or the people belonging to the same, or for any other use or purpose, save for the uses in this act before mentioned. This act not to extend to purchases made for the support of such houses, &c.



1730-1.

For to impeach the title of any persons claiming the lands.

V. *Provided also*, That this act, nor any thing therein contained shall be deemed or construed to impeach the just right or title, which any person or persons may have to any of the lands or tenements herein before mentioned, so that they prosecute such their right or claim within the space of three years next after the publication of this act.

Passed 6th February 1730-31.—Recorded A. vol. II. page 418.

## CHAPTER CCCXXII.

Ante. chap. 245.

*An ACT for the better prevention of accidents that may happen by fire in the city of Philadelphia, by bake-houses, and coopers shops.*

How coopers-shops must be built.

**FOR** the further securing the inhabitants of the city of Philadelphia from the dangers that may happen by fire, *BE it enacted*, That from and after the space of sixteen months next ensuing the publication of this act, no person whatsoever, within the said city, by himself, his agents, journeymen, or servants, shall occupy the trade of a cooper or baker, but in such shops or places as are built in the manner herein respectively directed and appointed: that is to say, That no person, after the time aforesaid, shall occupy the trade of a cooper, within the said city, but in a shop or place built of brick or stone with a large chimney in the same, the ceiling thereof plastered, no stairs nor passage up the loft within such shop, and the floor thereof to be earth, or laid with good two-inch oak plank. And that no person, after the time aforesaid, within the said city, shall occupy the trade of a biscuit or soft-bread-baker, but in a bake-house built of brick or stone, and arched over with brick, if the place will admit thereof, or otherwise to be well ceiled with plastering; the floor of the said bake-house paved with brick or stone; the crown of the oven to be secured by carrying up the foundation walls square, and filling the same with gravel or sand, at least six inches higher than the top of the oven; and the chimney to be arched in the said bake-house, without any timber in or near adjoining to the same.

How bake-houses must be built.

Penalty on offenders against this act.

**II.** *And be it further enacted*, That if any person or persons, from and after the time aforesaid, shall presume, by themselves, their agents, journeymen, or servants, to occupy the trade of a cooper, or biscuit or soft-bread baker, or either of them, within the city aforesaid, in any shop or place, other than is above directed, enjoined and appointed, every person so offending, for every month he, she or they, shall occupy the trades of baker or cooper, or either of them, in any shop or bake-house, contrary to the directions of this act, shall forfeit as herein after is provided; that is to say, for the first offence, the sum of twenty shillings; and for the second offence, the sum of thirty shillings; and for the third and every other offence, the sum of forty shillings, to be recovered, upon complaint made, in the name of the clerk of the market for the city of Philadelphia, or in the name of any other person who will give information of the same, for and towards the repair of fire engines,

and purchasing leathern buckets, before two Magistrates of the said city, whereof the Mayor for the time being to be one. 1730-1.

III. *Provided always*, That if any person or persons shall find him, her or themselves, aggrieved with any judgment or sentence of the said two magistrates, it shall and may be lawful for the person or persons, so aggrieved, to appeal to the next Court of Common Pleas, to be held for the city and county of Philadelphia aforesaid, whose judgment therein shall be definitive.

IV. *And be it further enacted*, That no person whatsoever, within the city aforesaid, from and after the tenth day of May next ensuing, shall keep or stack any hay, within one hundred feet of any dwelling-house or other building, except it be in a stable, or other secure house, nor shall keep any greater number of faggots than two hundred, unless it be at a distance of one hundred feet from any dwelling-house or other building, under the penalty of ten shillings for every offence; which penalties so accruing shall be recovered, and applied in the manner and to the use aforesaid, with costs of suit; and the hay and faggots, so remaining against the tenor of this act, shall be liable to be removed, in such sort, manner and form, as any nuisance may be by the laws of Great-Britain, or this province.

Keeping of  
hay and fag-  
gots regula-  
ted.

Passed 6th February, 1730-31.—Recorded A. vol. II. page 421.



# ACTS

OF THE

## General Assembly of Pennsylvania.

Passed at a Session which commenced October 14th, 1745.  
and ended June 24th, 1746.

1745-6.


GEORGE THOMAS, LIEUTENANT GOVERNOR.

### CHAPTER CCCLXVII.

Printed at  
large, vol. 1,  
(8vo.) 287,  
vol. 1 (folio),  
312.

*An ACT for erecting of a house of correction and work-house in the borough of Bristol, in the county of Bucks, and for raising of money on the inhabitants of the said borough for the public use and benefit thereof.*

[1. **RECITAL** of the original charter, the powers of the Burgesses, &c. and the want of a house of correction and work-house in said Borough, to maintain the good government thereof—*enacts*, that the Burgesses and Common Council shall annually calculate the public charges for building and repairing a house of correction, market-house, public stalls and bridges, for repairing town wharves, regulating streets and highways, and for other public uses, as may be judged necessary for the year ensuing. 2. Inhabitants to choose assessors, to lay the rates or assessments for the said uses. 3. Constables to make return of the estates of the inhabitants, the High Constable to be the Collector. 4. Assessments not to exceed three pence in the pound in any one year, nor those to be rated, who are not taxed for the relief of the poor. 5. Treasurer to be appointed by the Burgesses and Council, and his duties prescribed. 6. Who shall account yearly or oftener, if required, in the presence of the inhabitants desiring to attend. 7. Collector to give notice of assessments, and day of appeal; to pay the monies collected to the Treasurer. Burgesses and Council to attend the appeals. 8. Collectors' allowance and duties. 9. Burgesses to erect a house of correction, to be employed for the keeping, correcting, and setting at work of all rogues, vagabonds, sturdy beggars, and idle and disorderly persons. 10. Burgesses and Council to choose a President, Treasurer, and Assistants for

the house of correction, to supply vacancies, and do all other things 1745-6.  
 concerning the said work-house and house of correction, as fully as   
 Justices of the Peace may do in respect of the work-houses in the  
 several counties. 11. The President, Treasurer, and Assistants  
 incorporated by the name of "The President, Treasurer and As-  
 sistants of the Borough of Bristol." 12. Burgesses to determine  
 debts under forty shillings. 13. To commit debtors and offenders  
 to the common gaol in certain cases.]

Passed 1st March, 1745-46.—Recorded A. vol. III. page 161. (1) [Local Act.]

(1) The charter of the Borough of  
*Bristol*, re-established, September 16th,  
 1785, (chap. 1171.)

The charter power to hold fairs, re-  
 pealed. April 4th, 1796, (chap. 1893.)

Limits of the borough extended, and  
 power given to the corporation, to lay  
 out, open, and regulate streets, lanes,

and alleys for the accommodation of the  
 inhabitants, within the borough, as ex-  
 tended. February 23d, 1801, (chap.  
 2181.)

The public property vested in the  
 commonwealth, for its original uses.  
 February 28th, 1780, (chap. 867.)



# ACTS

OF THE

## General Assembly of Pennsylvania.

Passed at a Session, which commenced October 14th, 1748,  
and ended August 19th, 1749.

1749.

GEORGE THOMAS, LIEUTENANT-GOVERNOR.

### CHAPTER CCCLXXVII.

*An ACT for erecting part of the province of Pennsylvania, westward of Susquehanna, and south-eastward of the South Mountain, into a county.*

**WHEREAS** a great number of the inhabitants of the western part of Lancaster county have, by their petition, humbly represented to the Governor and Assembly of this province, the great hardships they lie under, by being at so great a distance from the borough of Lancaster, where the Courts of Justice are held, and the public offices are kept, and how hard and difficult it is for the sober and quiet part of the inhabitants of that part of the county to secure themselves against thefts and abuses, frequently committed amongst them by idle and dissolute persons, who resort to the remote parts of the province, and, by reason of the great distance from the court or prison, frequently find means of making their escapes: For remedying of which inconveniences, and relief of the inhabitants in the premises, *Be it enacted*, That all and singular the lands, lying within the province of Pennsylvania aforesaid, to the westward of the river Susquehanna, and southward and eastward of the South Mountain, be erected into a county; and the same is hereby erected into a county, named, and henceforth to be called York; bounded northward and westward by a line, to be run from the said river Susquehanna along the ridge of the said South Mountain, until it shall intersect the Maryland line, southward by the said Maryland line, and eastward by the said river Susquehanna.

**II.** *And be it further enacted,* That the inhabitants of the said county, shall, at all times hereafter, have and enjoy all and singular the jurisdictions, powers, rights, liberties and privileges whatsoever, which the inhabitants of any other county within the said province do, may, or ought to enjoy, by any charter of privileges, or the laws of this province, or by any other ways or means whatsoever, excepting only in the number of Representatives to serve in General Assembly of this province, in which case it is *provided, and further enacted,* That until it shall be otherwise ordered by the Governor and Assembly of this province, the freemen and inhabitants of the said county, qualified by the laws of this province to elect, shall annually meet at or near the place where the court house is intended to be built for the said county, at the same time the inhabitants of the other counties of this province shall meet for like purposes, and there proceed to choose Inspectors, and to elect two Representatives, or Delegates, to serve them in Assembly, in the same manner as by the charter and laws of this province is directed in respect to other counties ; which said two Representatives, when so chosen, shall be members of the General Assembly of the province of Pennsylvania, and sit and act as such, as fully and freely as any of the Representatives for the other counties within this province, do, may, can, or ought to do.

The inhabitants to elect two Representatives in Assembly.

**IV.** *And be it further enacted,* That the Justices of the Supreme Court of this province shall have like powers, jurisdictions and authorities, within the said counties of Lancaster and York, as by law they are vested with, and entitled unto, in the other counties within the province aforesaid ; and are hereby authorized and empowered from time to time, to deliver the gaols of the said counties of capital or other offenders, in like manner as they are authorized to do in other the counties aforesaid.

Jurisdiction of the Supreme Court established.

**V.** *And be it further enacted,* That there shall be a competent number of Justices nominated and authorized by the Governor for the time being, by commissions under the broad seal of the province ; which said Justices, or any three of them, shall and may hold Courts of General Quarter Sessions of the Peace, and Gaol Delivery, and County Courts for holding of Pleas ; and shall have all and singular, the powers, rights, jurisdictions and authorities, to all intents and purposes, as other the Justices of Courts of General Quarter Sessions, and Justices of the County Courts for holding of Pleas, in the other counties aforesaid, may, can, or ought to have, in their respective counties ; which said courts shall sit and be held for the said county of York on the last third day of the week, commonly called Tuesday, in every of the months called April, July, October, and January, in every year, at some proper place within the said county, until a court house shall be built ; and when the same is built and erected in the county aforesaid, the said several courts shall then be holden and kept at the said court house, on the days before mentioned. And the election of Representatives to serve in General Assembly, Assessors, and all other officers of the said county, who are or shall be appointed to be annually elected, shall be made and elected at or near the said court house, at the same time, and in the same manner, as by the charter of privileges,

County Courts established.



1749. and laws of the province aforesaid, is directed to be done in the other counties within this province. And it shall be lawful for the freemen of the said county, for the first year, to choose three Commissioners for raising county rates and levies for the said county.

Passed 19th August, 1749.—Recorded A. vol. III. page 177. (m)

(m) Eight sections of this act are omitted, being merely occasional, and long obsolete. They provided for the collection of the taxes assessed in the county of Lancaster, before its division—the appointment of trustees for building a court-house and prison, and assessing and levying taxes for that purpose—for continuing the suits previously commenced in Lancaster county—for the appointment of a collector of excise, &c.—and that the Sheriff and Coroner of Lancaster county should continue to officiate in the county of York, until the like officers were elected in the new county.

The county of Cumberland was erected, January 27th, 1749-50, (chap. 380.) And February 9th, 1750-51, (post. chap. 387,) an act was passed for explaining the boundary line between the counties of York and Cumberland, as follows: "From the mouth of Yellow Breeches Creek, at Susquehanna, up the several courses thereof to the mouth of Dogwood Run, and from thence on one continued straight line to be run to the ridge of mountains, called the South Mountain, and from thence along the ridge of the South Mountain to the Maryland line."

The county of *Adams* was taken from York county, January 22d, 1800, (post. chap. 2086.) "Beginning in the line of Cumberland county where the road from *Carlisle* to Baltimore leads through *Trent's* gap, (in the South Mountain,) thence along the said road to *Binder's*; thence a straight line to *Conewago* creek opposite to the mouth of *Abbot's* Run; thence along the line of *Berwick* and *Paradise* townships, until it strikes the line of *Manheim* township; thence along the line of *Manheim* and *Berwick* westwardly, until it strikes the road leading from *Oxford* to *Hanover*; and from thence a due South course until it strikes the Maryland line; thence along the Maryland line to the line of *Franklin* county; thence along the line of *Franklin* and *Cumberland* counties to the place of beginning." *Franklin* was

erected September 9th, 1784, and was bounded by the old York line on the South Mountain.

By the last enumeration, the county of York agreeable to the foregoing boundaries, contained five thousand five hundred and sixty-two taxables; and with the county of *Adams*, eight thousand three hundred and three taxables; and by the act of Assembly of March 21st, 1808, (chap. 2931,) apportioning the representation, the county of York sends four members to the House of Representatives; and with the county of *Adams*, forming a Senatorial district, two members to the Senate.

By the act of September, 1785, (chap. 1164,) the county of York was divided into five election districts. September 7th, 1789, *Newberry* township was taken from the fifth, and annexed to the first election district at York, (chap. 1417.)

Some of those election districts having fallen into the county of *Adams*, by an act of February 10th, 1801, (chap. 2167,) the second, third and fifth districts were altered and re-established.

By act of February 13th, 1802, (chap. 2230,) the 6th, 7th, 8th, and 9th districts were established.

Three new districts were added, by act of March 31st, 1806, (chap. 2715.)

April 11th, 1807, (chap. 2856,) alterations were made in the place of holding the elections for the third and tenth districts.

By the Judiciary act of February 24th, 1806, the counties of York, Lancaster, and Dauphin, compose the second district. And the courts of York are held on the first Mondays in January, April, August and November. The term continues two weeks.

York county is part of the Lancaster district of the Supreme Court by the act of March 11th, 1809.

The town of York was incorporated by act of September 24th, 1807, (post. chap. 1304.)

# A C T S

OF THE

## General Assembly of Pennsylvania.

Passed at a Session which commenced October 14th, 1749,  
and ended 18th, August 1750.

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JAMES HAMILTON, LIEUTENANT GOVERNOR.

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1749-50.



### CHAPTER CCCLXXX.

*An ACT for erecting part of the province of Pennsylvania, westward of Susquehanna, and northward and westward of the county of York, into a county.*

**WHEREAS** a great number of the inhabitants of the western part of Lancaster county have, by their petition, humbly represented to the governor and assembly of this province the great hardships they lie under, by being at so great a distance from the borough of Lancaster, where the courts of justice are held, and the public offices are kept, and how hard and difficult it is for the sober and quiet part of the inhabitants of that part of the county to secure themselves against thefts and abuses, frequently committed amongst them by idle and dissolute persons, who resort to the remote parts of the province, and, by reason of the great distance from the court or prison, frequently find means of making their escapes: For remedying of which inconveniences, and relief of the inhabitants in the premises, *Be it enacted*, That all and singular the lands, lying within the province of Pennsylvania aforesaid, to the westward of Susquehanna, and northward and westward of the county of York, be and hereby are erected into a county, named, and hereafter to be called CUMBERLAND; bounded northward and westward with the line of the province, eastward partly with the river Susquehanna, and partly with the said county of York, and southward in part by the said county of York, and part by the line dividing the said province from that of Maryland.

Boundaries  
of the county  
of Cumberland.

**II.** *And be it further enacted*, That the inhabitants of the said county shall, at all times hereafter, have and enjoy all and singular the jurisdictions, powers, rights, liberties and privileges whatsoever, which the inhabitants of any other county within the said pro-

The inhabitants  
to elect  
two representatives  
in assembly.



1749-50. vince do, may, or ought to enjoy, by any charter of privileges, or the laws of this province, or by any other ways or means whatsoever, excepting only in the number of representatives to serve in general assembly of this province, in which case it is *provided, and further enacted*, That until it shall be otherwise ordered by the governor and assembly of this province, the freemen and inhabitants of the said county, qualified by the laws of this province to elect, shall annually meet at or near the place where the court-house is intended to be built for the said county, at the same time the inhabitants of the other counties of this province shall meet for like purposes, and there proceed to choose inspectors, and to elect two representatives, or delegates, to serve them in assembly, in the same manner as by the charter and laws of this province is directed in respect to other counties; which said two representatives, when so chosen, shall be members of the general assembly of the province of Pennsylvania, and sit and act as such, as fully and freely as any of the representatives for the other counties within this province do, may, can or ought to do.

Jurisdiction  
of the Su-  
preme Court  
and

IV. *And be it further enacted*, That the Justices of the Supreme Court of this province shall have like powers, jurisdictions and authorities, within the said county of Cumberland, as by law they are vested with, and entitled unto, in the other counties within the province aforesaid; and are hereby authorized and empowered, from time to time, to deliver the gaol of the said county of capital or other offenders, in like manner as they are authorized to do in other the counties aforesaid.

County court  
established.

V. *And be it further enacted*, That there shall be a competent number of Justices nominated and authorized by the governor for the time being, by commissions under the broad seal of the province; which said Justices, or any three of them, shall and may hold courts of general quarter sessions of the peace and gaol delivery, and county courts for holding of pleas: and shall have all and singular the powers, rights, jurisdictions and authorities, to all intents and purposes, as other the justices of courts of general quarter sessions, and justices of the county courts for holding of pleas, in the other counties aforesaid, may, can, or ought to have, in their respective counties: which said courts shall sit and be held for the said county of Cumberland on the third day of the week, commonly called Tuesday, next preceding the courts held for the county of York, in the months called April, July, October, and January, in every year, at some proper place within the said county, until a court-house shall be built; and when the same is built and erected in the county aforesaid, the said several courts shall then be holden and kept at the said court-house, on the days before mentioned. And the election of representatives to serve in general assembly, assessors, and all other officers of the said county, who are or shall be appointed to be annually elected, shall be made and elected at or near the said court-house, at the same time, and in the same manner, as by the charter of privileges, and laws of the province aforesaid, is directed to be done in the other counties within this province. And it shall be lawful for the freemen of

the said county, for the first year, to choose three commissioners for raising county rates and levies for the said county. 1749-50

Passed 27th January, 1749-50.—Recorded A. vol. III. page 213. (n)

(n) See the notes to the preceding act, relating to the county of York. The sections omitted are the same in form and substance, except the 13th section, and are all obsolete. The 13th section authorized the trustees of York and Cumberland to run the boundary lines, which are further explained by chap. 387, post.

The boundaries of Cumberland have been since greatly abridged. 1st, by the erection of the county of Bedford, March 9th, 1771, (post. chap. 629.) 2d, by the erection of Northumberland, March 21st, 1772, (post. chap. 644.) 3d, by the erection of Franklin county, September 9th, 1784; and finally, by the erection of Mifflin county, September 19th, 1789, (post. chap. 1425,) and by chap. 593, commissioners were appointed to run the lines between Lancaster, Cumberland and Berks.

By the last enumeration, the county of Cumberland contained four thousand four hundred and eighty-three taxables, and by the act of Assembly of March 21st, 1808, (chap. 2931,) apportioning the representation, sends three members to the house of representatives, and one member to the senate.

By the act of September 1785, (chap. 1164,) the county of Cumberland was divided into four election districts.

By act of September, 10th, 1787, (chap. 1290, sect 5,) the townships of Greenwood and Rye, were made the

sixth election district. Rye, and part of Greenwood, by act of March 21st, 1797, (chap. 1922.)

The division of Mifflin county, having taken away part of the old districts, by act of April 4th, 1792, the township of Newton, and part of West Pennsborough are made a district, and called the fifth district. April 15th, 1795, (chap. 1828,) East Pennsborough and Allen townships are made a separate district. Place altered, January 13th, 1803, (chap. 2298.)

The place of holding elections in Juniata, Greenwood, and part of Buffaloe altered March 8th, 1802, (chap. 2238.) Tyrone, and Geboyne townships erected into two separate districts, March 21st, 1803, (chap. 2340.)

Buffaloe township made a district, February 11th, 1805, (chap. 2528.)

By the Judiciary act of February 24th, 1806, (chap. 2634,) the counties of Cumberland, Adams, and Franklin compose the ninth district; the terms continue one week, and are held in Cumberland on the first Mondays of January, April, August and November.

The borough of Carlisle was established April 13th, 1782, (chap. 958,) amended by a supplement April 19th, 1794, (chap. 1744.)

Dickinson College established at Carlisle, September 9th, 1783, (chap. 1013.)

## CHAPTER CCCLXXXIV.

### *An ACT for barring estates tail.*

**FORASMUCH** as the entailing of estates within this province, without a provision by law for barring them, would introduce perpetuities, prevent the improvement of such estates, disable tenants in tail to make provision for the younger branches of their families, prove of general detriment to the province, and be attended with manifold inconveniences. For preventing whereof for the future, *Be it enacted*, That fines and common recoveries heretofore levied and suffered within the province of Pennsylvania, or which shall at any time or times hereafter be levied or suffered within the said province, duly, and according to the common or statute laws of England, either in the Supreme Court of Judicature within the said province, or in any of the County Courts for holding of Pleas, within the said province respectively, in which the houses, lands, tenements, or hereditaments entailed, do or shall lay, shall be and

Fines and recoveries heretofore and hereafter suffered to be valid.



1749-50. are hereby declared to be of like force and effect, to all intents, constructions and purposes, for barring estates so entailed, as fines and common recoveries, by the laws of England aforesaid, there levied or suffered, of lands, tenements, and estates, entailed within that realm, are received, declared, or enacted to be.

Remedy by writ of error.

II. *Provided always*, That it shall and may be lawful for any person or persons, either by appeal or writ of error, as the case may require, to seek and obtain redress against any error or errors which have happened, or may happen, in any such proceedings.

Passed 27th January, 1749-50.—Recorded A. vol. III. page 223. (o)

(o) On the subject of estates tail, fines and recoveries, by the report of the Judges, the following English statutes extend to *Pennsylvania*:

13 Edward 1. Stat. 1. Chap. 1. "In gifts in tail, the donor's will shall be observed"—except such part as has been altered by the act in the text, and the act passed January 16th, 1799, entitled "an act to facilitate the barring of entails."

27 Edward 1. Stat. 1. Chap. 1. "De Finibus levatis."

15 Edward 2. A statute concerning fines—except that part which relates to "the admission of attorneys."

14 Edward 3. Stat. 1. Chap. 18. "If the tenant will vouch to warranty a dead man, the demandant may aver that he is dead."

34 Edward 3. Chap. 16. "*Item*, it is accorded, that the plea of non claim of fines, which from henceforth be to be levied, shall not be taken nor holden for any bar in time to come."

5 Henry 4. Chap. 14. "Inrolling of writs in the common place whereupon fines be levied."—That part only of this Statute is in force, which directs that all the writs of covenant, and all other writs whereupon fines shall be levied, with the writs of *Dedimus, potestatem*, if any, with all knowledges and notes of the same, shall be inrolled in a roll, to be of record forever.

1 Richard 3. c. 7. "Who shall be bound by a fine levied before the Justices of the Common Pleas; and proclamations made thereof.

This Statute is in force, except such parts as are altered by the Statute of 31 Eliz. Chap. 2.

4 Hen. 7. Chap. 24. "How often a fine levied in the Common Pleas shall be read and proclaimed, and who then shall be bound thereby.

32 Hen. 8. Chap. 36. "For the exposition of the Statute of fines."

This Statute is in force, except the third and fourth Sections.

(See Williams' notes to 1 Saund. 259, 261.)

1 Mary. Session 2. Chap. 7. "An act touching proclamations upon fines."

14 Elizabeth, Chap. 8. "An act for the avoiding of recoveries suffered by collusion by tenants for term of life, and such others."

31 Elizabeth, Chap. 2. "An act for abridging of proclamations upon fines to be levied at Common Law."

The act in the text, validates and confirms all fines and recoveries, levied or suffered, according to the Common or Statute Laws of England. It has therefore, been thought necessary to refer, generally, to the foregoing Statutes, on this head.

But although the act in the text remains in force, and may be resorted to, in some cases necessarily, yet as far as it respects *common recoveries*, it is greatly superseded in practice by the act of January 16th, 1799, (post. chap. 2003.) By which act, estates tail may be barred by deed of grant, bargain and sale, which shall be good and available to all intents and purposes, as any mode of common recovery—and estates tail previously conveyed by such deeds may be again conveyed and confirmed by new deeds. "*Provided always*, That every grantor, bargainor, or vendor, by virtue of this act, shall, in the conveyance or assurance, made by him, her or them, state his, her or their intention thereby to debar any estate tail, in possession, reversion or remainder, that he, she or they has or have in the lands, tenements or hereditaments, so intended to be granted. *And provided also*, That every conveyance or assurance by virtue of this act, being first proved or acknowledged, agreeably to the laws of this Commonwealth, shall, in open court, on motion, be entered upon the records of the Supreme Court of this Commonwealth, or upon the records of the Court of Common Pleas for the county, in which the said lands or tenements so granted, lie, in the manner commonly used with respect to Sheriffs' deeds, and shall also be recorded within six months next after the execution of the said conveyance or assur-

ance, in the county where the said lands or tenements so granted shall lie."

By an act passed April 13th, 1791, (post. chap. 1564,) no fine or common recovery, &c. shall be avoided or reversed for any defect or error therein, unless the writ of error be commenced and prosecuted with effect within seven years, after such fines levied, or common recovery suffered.

What shall be construed an estate tail, and what not, see 1 Dallas, 47-8. 4 Dallas, (appendix,) 12, 22. 1 Binney, 546.

The heir at common law takes an estate tail, *per formam doni*. See 1 Binney, 96. Lessee of Sauder and wife, and Shultz and wife v. Morningstar. York, *Nisi Prius*, October 1793. Cor. McKean, C. J. and Yeates, J. MSS. Reports.

Where the lands of tenant in tail have been sold by the Sheriff, and the vendee obtains possession, and suffers a common recovery, wherein he vouches the tenant in tail, it is good. Lessee of Sharp v. Pettit. Chester, April, 1807, Circuit Court. Affirmed on appeal. MSS. Reports.



# ACTS

OF THE

## General Assembly of Pennsylvania.

Passed at a Session which commenced October 14th, 1750,  
and ended August 24th, 1751.

1750.

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JAMES HAMILTON, LIEUTENANT GOVERNOR.

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### CHAPTER CCCLXXXVII.

*An ACT for explaining and ascertaining the boundary line between the counties of York and Cumberland, in the province of Pennsylvania. (p)*

**WHEREAS** by an act of General Assembly, of this province, entitled *An Act for erecting part of the province of Pennsylvania, westward of Susquehanna, and south eastward of the South Mountain, into a county*, passed in the twenty-third year of the present reign, it was enacted, that all and singular the lands lying within the province of Pennsylvania aforesaid, to the westward of the river Susquehanna, and southward and eastward of the South Mountain, should be erected into a county, and the same were thereby erected into a county by the name of York, bounded northward and westward by a line to be run from the said river Susquehanna along the ridge of the said South Mountain, until it shall intersect the Maryland line, southward by the said Maryland line, and eastward by the said river Susquehanna. And whereas by a subsequent act of General Assembly of this province, passed in the same year of the present reign, entitled *An act for erecting part of the province of Pennsylvania, westward of Susquehanna, and northward and westward of the county of York, into a county*, it was enacted, that all and singular the lands lying within the province of Pennsylvania aforesaid, to the westward of Susquehanna, and northward and westward of the county of York, should be, and thereby were erected into a county, by the name of Cumberland ; bounded northward

(p) See ante. chapters 377, 380, and the notes there subjoined. (Note to former edition.)

and westward with the line of the province, eastward, partly with the river Susquehanna, and partly with the said county of York, and southward, in part by the said county of York, and part by the line dividing the said province from that of Maryland. And whereas, to the end the counties of York and Cumberland might be the better ascertained and known, it was by the said last mentioned act of Assembly further enacted, that it should be lawful for the trustees named in the said act, and the act of Assembly by which the county of York was erected into a county, or for a majority of each of them, and they were thereby required and firmly enjoined, within the space of six months next after the publication of the said act, to assemble themselves together, and, with the assistance of one or more Surveyors, by them respectively to be provided, to run, mark out and distinguish, the boundary line between the said counties of York and Cumberland. But forasmuch as the ridge of mountains called the South Mountain, along which the lines, dividing the said counties of York and Cumberland, were directed to be run by the several herein before mentioned acts from the river Susquehanna to the mouth of a run of water, called Dogwood Run, is discontinued, much broken, and not easily to be distinguished, whereby great differences have arisen between the trustees of the said counties, concerning the manner of running the said line ; by which means the boundaries of the said counties, between the river Susquehanna and the mouth of the aforesaid run of water, called Dogwood Run, are altogether unsettled, and so likely to continue, to the great injury of the said counties, and to the frustrating the good purposes by the herein before mentioned acts of Assembly intended : For preventing whereof, and to the end the boundaries between the said counties of York and Cumberland may be certainly known, *Be it enacted*, That the creek, called Yellow-breeches Creek, from the mouth thereof, where it empties itself into the river Susquehanna aforesaid, up the several courses thereof, to the mouth of a run of water, called Dogwood Run, and from thence on one continued straight line, to be run to the ridge of mountains, called the South Mountain, and from thence along the ridge of the said South Mountain, until it intersect the Maryland line, shall be, and is hereby declared to be, the boundary line between the said counties of York and Cumberland. (q)

The division line of the two counties described.

II. Obsolete. [Trustees appointed to run the lines within four months.]

III. *Provided*, That nothing herein contained shall be deemed or taken to disannul or make void the said recited acts, or any thing therein contained ; but that every clause, article and sentence therein, except what is hereby altered or supplied, shall be and remain in full force and virtue.

Passed 9th February, 1750-1.—Recorded A. vol. III. page 242.

(q) There seems to be an error in the date recited in the preamble, the act referred to having been passed in the 22d, and not the 23d Geo. II. See ante. chapters 377, 380. (*Note to former edition.*)



1750.

## CHAPTER CCCLXXXVIII.

*An ACT for the more effectual preventing accidents which may happen by fire, and for suppressing idleness, drunkenness, and other debaucheries. (r)*

Former laws  
against firing  
chimnies,  
guns, fire-  
works, &c.  
extended.

TO the end the provisions already made by our laws, for preventing accidents which may happen by fire in the city of Philadelphia, and several other boroughs and towns, within this province, may be made more generally useful, and to prevent, as much as in us lies, the growing sins of idleness, drunkenness, and other debaucheries, too frequent among us, *Be it enacted*, That if any person or persons whatsoever, within any county town, or within any other town or borough, in this province, already built and settled, or hereafter to be built and settled, not hitherto restricted nor provided for by our laws, shall set on fire their chimnies to cleanse them, or shall suffer them or any of them to take fire, and blaze out at the top, or shall fire any gun or other fire-arm, or shall make, or cause to be made, or sell or utter, or offer to expose to sale, any squibs, rockets or other fire-works, or shall cast, throw or fire any squibs, rockets or other fire-works, within any of the said towns or boroughs, without the Governor's special licence for the same, every such person or persons, so offending, shall be subject to the like penalties and forfeitures, and to be recovered in like manner, as in and by an act, passed in the eighth year of the reign of King George the first, entitled, *An act for preventing accidents that may happen by fire*, are directed to be levied and recovered. (s)

Passed 9th February, 1750-1.—Recorded A. vol. III. page 240.

(r) For a general reference to the acts for preventing accidents by fire, see ante. chap. 245. (*Note to former edition.*)

(s) This section as far as it relates to firing chimnies, is repealed and supplied, chap. 1307.

The remaining sections of this act, prohibiting horse-races, shooting matches, &c. have been superseded and supplied by the act for the suppression of vice and immorality, chap. 1747. (*Note to former edition.*)

## CHAPTER CCCXC.

*An ACT to encourage the establishing of an Hospital, for the relief of the sick poor of this province, and for the reception and cure of lunatics.*

WHEREAS the saving and restoring useful and laborious members to a community is a work of public service, and the relief of the sick poor is not only an act of humanity, but a religious duty: And whereas there are frequently in many parts of this province poor distempered persons, who languish long in pain and misery, under various disorders of body and mind, and being scattered abroad in different and very distant habitations, cannot have the benefit of regular advice, attendance, lodging, diet and medicines, but at a great expense, and therefore often suffer for want thereof: which inconveniency might be happily removed by collecting the

patients into one common provincial Hospital, properly disposed and appointed, where they may be comfortably subsisted, and their health taken care of, at a small charge, and where, by the blessing of God on the endeavours of skilful physicians and surgeons, their diseases may be cured and removed : And whereas it is represented to this Assembly, that there is a charitable disposition in divers inhabitants of this province to contribute largely towards so good a work, if such contributors might be incorporated, with proper powers and privileges for carrying on and compleating the same, and some part of the public money given and appropriated to the providing a suitable building for the purposes aforesaid : Therefore, for the encouragement of so useful, pious, and charitable a design, we pray that it may be enacted, *And be it enacted*, That it shall and may be lawful to and for all persons, each of whom shall have contributed or subscribed the sum of ten pounds, or more, towards founding and establishing an Hospital, for the reception and relief of lunaticks, and other distempered and sick poor within this province, or as many of them as shall think fit, to assemble and meet on the first day of the month called July next ; and for all persons, who shall thereafter contribute the like sum of ten pounds, or more, together with the said first subscribers, or so many of them as shall think fit, to assemble and meet on the second day of the first week in the month called May yearly, for ever, at some convenient place in the city of Philadelphia, then and there to elect, by ballot, twelve fit and suitable persons, of their own number, to be managers of the said contribution and Hospital, and one other person to be Treasurer of the same, until the next election ; and farther to make such laws, rules and orders, as shall appear to them, the said contributors met, or the major part of them, to be good, useful and necessary, for the well governing, ordering and regulating the said Hospital, and for the regulation of the future elections of Managers, Treasurer, and other necessary officers and ministers thereof, and for limiting and appointing their number, trust and authority ; and generally for the well ordering all other things concerning the government, estate, goods, lands, revenues, as also all the business and affairs of the said Hospital : All which laws, rules and orders, so to be made as aforesaid, shall be from time to time inviolably observed by all concerned, according to the tenor and effect of them, provided they be not repugnant to the laws of England, or this government, and are approved by the Chief Justice, the Speaker of the Assembly, and the Attorney General of this province for the time being, under their hands and seals. And the said contributors shall be, and are hereby made a body corporate in law, to all intents and purposes, and shall have perpetual succession, and may sue or be sued, plead or be impleaded, by the name of the Contributors to the Pennsylvania Hospital, in all Courts of Judicature within this province ; and by that name shall and may receive and take any lands, tenements or hereditaments, not exceeding the yearly value of one thousand pounds, of the gift, alienation, bequest or devise of any person or persons whomsoever, and of any goods or chattels whatsoever ; and the said Contributors are hereby empowered to have and use one common seal in their affairs, and the same at their pleasure to change and alter.

1751.

Persons contributing ten pounds to meet yearly :

and to elect managers, &c. and make laws, &c.

Contributors made a Corporation.

Limitation of their estate.



1751.

Money given  
to the capital  
stock not to  
be expended.

**II.** *Provided nevertheless,* That no general meeting of the said Contributors, nor any persons acting under them, shall employ any money, or other estate, expressly given or added to the capital stock of the said Hospital, in any other way than by applying its annual interest or rent towards the entertainment and care of the sick and distressed poor, that shall be from time to time brought and placed therein, for the cure of their diseases, from any part of this province, without partiality or preference.

Two thousand pounds  
expectant  
given to the  
use of the  
Hospital.

**III.** And for the farther encouragement of this beneficent undertaking, *Be it enacted,* That when the said contributors, shall have met, and chosen their Managers and Treasurer as aforesaid, and shall have raised, by their contributions, a capital stock of two thousand pounds value (the yearly interest or rent of which is to be applied to the accommodating of the sick poor in the said Hospital, free of charge for diet, attendance, advice and medicines) and shall make the same appear to the satisfaction of the Speaker of the Assembly for the time being, that then it shall and may be lawful for the said Speaker of the Assembly, and he is hereby required, to sign an order or orders on the Provincial Treasurer, or Trustees of the Loan Office, for the payment of two thousand pounds, in two yearly payments, to the Treasurer of the said Hospital, to be applied to the founding, building and furnishing of the same.

Accounts to  
be published  
in the Gazette  
yearly.

**IV.** *And be it further enacted,* That the accounts of the disbursements of the said two thousand pounds, so ordered by the Speaker of the Assembly aforesaid, or any part thereof that shall be hereafter expended, as the case may be, and of the rents, products and interests of any real or personal estates or sums of money, charitably given to the use of the said Hospital, together with a list of such donations, shall be fairly drawn out, and published annually in the Gazette or other news-papers; and the Managers of the said Hospital shall, at all times when required, submit the books, accounts, affairs and economy thereof, to the inspection and free examination of such visitors, as may from time to time be appointed by the Assembly of this province to visit and inspect the same.

**V.** *Provided always, and it is hereby further enacted,* That if at any time hereafter there should not be a constant succession of Contributors to meet yearly, and choose Managers as aforesaid, then the said Hospital, and the estate and affairs thereof, shall be in the management and under the direction of such persons, as shall be from time to time appointed by act of General Assembly of this province for that purpose.

Passed 11th May, 1751.—Recorded A. vol. III. page 245. (t)

(t) By an act to extend the benefits experienced from the institution of the Pennsylvania Hospital, passed April 11th, 1793, (post. chap. 1683,) § 26,666, 67 cents, were granted to the contributors, out of the arrears due to the Commonwealth under the Loan Office act of February 26th, 1773, and the State Treasurer was directed to pay to the Treasurer of the Hospital all monies on that account received by him since the first day of January preceding, and

assign to the managers the mortgages and securities upon which any thing remained due. The managers to give security to use the utmost of their endeavours to collect the money, and after satisfying the grant, to pay the surplus to the State Treasurer. The managers were appointed trustees of the Loan Office, &c. and were directed to apply the money granted to erect additional buildings, and to render an account annually to the Legislature. Unclaimed

dividends of bankrupts' estates to be paid to them by the Commissioners of Bankrupts, the contributors to be liable therefor, when claimed, &c. The managers empowered to establish a Lying-in, and Foundling Hospital.

By a supplement to the above act, passed April 4th, 1796, (post. chap. 1897,) an additional grant of 25,000 dollars was made to the institution, to enable the contributors to finish the buildings, &c. and the managers directed to lay the accounts annually before the Legislature, till the same shall have been completed.

By another supplement, passed April 4th, 1805, (post. chap. 2600,) which recites that the managers had received the amount of the first grant, and faithfully applied the same. The act authorises a re-assignment of the mortgages, securities, &c. to the state treasurer, who is authorised to collect the balances for the use of the State.

Post. chap. 439, sect. 14, certain penalties appropriated to the Pennsylvania Hospital, page 225.

See, *Pennsylvania Hospital*,—*Health Office*, in the general index to this edition.

1751.

## CHAPTER CCCXCI.

*An ACT for repealing an act, entitled A Supplement to the act, entitled An Act for imposing a duty on persons convicted of heinous crimes, and to prevent poor and impotent persons being imported into this province.*

*BE it enacted, That an act of the General Assembly of this province, passed in the twenty-third year of the reign of the present King, entitled, \*A Supplement to the act, entitled An Act for imposing a duty on persons convicted of heinous crimes, and to prevent poor and impotent persons being imported into this province, and every clause, matter and thing, therein contained, shall be, and is hereby repealed, utterly made null and void.*

\*Chap. 347.  
Original act,  
chap. 314.  
See the existing act,  
March 27th,  
1789, (chap.  
1403,

Passed 24th August, 1751.—Recorded A. vol. III. page 248.



# A C T S

OF THE

## General Assembly of Pennsylvania.

Passed at a Session which commenced October 14th, 1751,  
and ended August 18th, 1752.

1752.

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JAMES HAMILTON, LIEUTENANT GOVERNOR.

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### CHAPTER CCCXCII.

*An ACT for erecting part of the counties of Philadelphia, Chester, and Lancaster, into a separate county.*

Boundaries  
of the county  
of Berks.

WHEREAS a great number of the back inhabitants of the county of Philadelphia, and the adjacent parts of the counties of Chester and Lancaster, by their petition, have humbly represented to the Governor and Assembly of this province, their remote situation from their respective county towns, where the Courts of Justice and public offices are kept, whereby they are frequently put to extraordinary expense of money, and loss of time, in their long journies thither, as parties in causes, witnesses, jurymen, &c. For remedying which inconveniences, and relief of the inhabitants in those remote parts in the premises : *Be it enacted*, That all and singular the lands, lying within the province of Pennsylvania aforesaid, within the metes and bounds as is herein after described, be erected into a county, and the same are hereby erected into a county, named and henceforth to be called Berks ; bounded as follows, by a line, at the distance of ten superficial miles south-west from the western bank of the river Schuylkill, opposite to the mouth of a creek, called Monocasy, to be run north-west to the extremity of the province, and south-east, until it shall intersect the line of Chester county, then on one straight line, crossing the river Schuylkill aforesaid, to the upper or north-westward line of M'Call's manor, then along the said line to the extremity thereof, and continuing the same course, to

the line dividing Philadelphia and Bucks counties, then along the said line north-west, to the extent of the county aforesaid. 1752.

II. *And be it further enacted*, That the inhabitants of the said county shall, at all times hereafter, have and enjoy all and singular the jurisdictions, powers, rights, liberties and privileges whatsoever, which the inhabitants of any other county within the said province do, may, or ought to enjoy, by any charter of privileges, or the laws of this province, or by any other ways or means whatsoever, excepting only in the number of Representatives to serve in General Assembly of this province, in which case it is *provided and further enacted*, That until it shall be otherwise ordered by the Governor and Assembly of this province, the freemen and inhabitants of the said county, qualified by the laws of this province to elect, shall annually meet at the town of Reading, near the river Schuylkill, in the said county, at the same time the inhabitants of the other counties of this province shall meet for like purposes, and there proceed to choose Inspectors, and to elect one Representative, or Delegate, to serve them in Assembly, in the same manner as by the charter and laws of this province is directed in respect to other counties; which said Representative when so chosen, shall be a member of the General Assembly of the province of Pennsylvania, and sit and act as such, as fully and freely as any of the Representatives for the other counties within this province do, may, can, or ought to do.

The inhabitants thereof to elect one Representative in Assembly.

IV. *And be it further enacted* That the Justices of the Supreme Court of this province shall have like powers, jurisdictions and authorities, within the said county of Berks, as by law they are vested with, and entitled unto, in the other counties within the province aforesaid; and are hereby authorised and empowered, from time to time, to deliver the gaols of the said county of capital or other offenders, in like manner as they are authorised to do in other the counties aforesaid.

V. *And be it further enacted*, That there shall be a competent number of Justices nominated and authorised by the Governor for the time being, by commissions under the broad seal of the province; which said Justices, or any three of them, shall and may hold Courts of General Quarter Sessions of the Peace and Gaol Delivery, and County Courts for holding of Pleas; and shall have all and singular the powers, rights, jurisdictions and authorities to all intents and purposes, as other the Justices of Courts of General Quarter Sessions, and Justices of the County Courts for holding of Pleas, in the other counties aforesaid, may, can, or ought to have, in their respective counties; which said courts shall sit and be held for the said county of Berks, on the third day of the week, commonly called Tuesday, next after the courts held for the county of Lancaster, in every of the months called May, August, November and February, in every year, at some proper place within the said county, until a court-house shall be built; and when the same is built and erected in the county aforesaid, the said several courts shall then be holden and kept at the said court-house, on the days before mentioned. And the election of a Representative to serve in General Assembly, Assessors, and all other officers of the said county, who are or shall be appointed to be annually elected, shall be made and elected at or near

Jurisdiction of the Supreme Court and County Court established.



1752. the said court-house, at the same time, and in the same manner, as by the charter of privileges, and laws of the province aforesaid, is directed to be done in the other counties within this province. And it shall and may be lawful for the freemen of the said county, for the first year, to choose three Commissioners for raising county rates and levies for the said county.

Passed 11th March, 1752.—Recorded A. vol. III. page 279. (u)

(u) The sections omitted in this act are occasional and obsolete. The taxes already laid, to be paid to the treasurers of Philadelphia, Chester and Lancaster. Trustees appointed for building a court-house and prison. The taxes therefor, how to be assessed and collected. Suits commenced in the original counties to be prosecuted to judgment, &c. Collector of excise appointed—Sheriff and coroner of Philadelphia to officiate in Berks until the first election in Berks. The boundary line to be run within six months by persons appointed for that purpose.

By a supplement passed February 18th, 1769, (chap. 593,) commissioners were appointed to run the lines between the counties of Lancaster, Cumberland and Berks, and between the counties of Northampton and Berks.

Part of Berks taken into the county of Northumberland, March 21st, 1772, (chap. 644.)

April 17th, 1795, commissioners appointed to run the lines between Northumberland and Berks, (chap. 1837.)

By the last enumeration, the county of Berks contained seven thousand five hundred and eighty taxables; and by act of assembly of March 21st, 1808, (chap. 2931,) apportioning the representation, sends five members to the house of representatives, and two members to the senate.

By an act passed September 21st,

1789, (chap. 926,) the county of Berks was divided into five election districts.

September 30th, 1791, (chap. 1579,) Union, Caernarvon, and Robeson townships, erected into a district.

March 19th, 1794, (chap. 1710,) the townships of Colebrookdale, Earl district, and Hereford, are erected into the 7th district.

Two additional districts established by an act passed April 1st, 1797, (chap. 1937.)

Another district established by act of February, 27th, 1798, (chap. 1953.)

Greenwich and Albany townships erected into a district, April 8th, 1799, (chap. 2050.)

Mahontongo township erected into a district, February 5th, 1802, (chap. 2225.)

Bethel township erected into a district, March 16th, 1803, (chap. 2337.)

Tulpehocken township erected into a district, April 4th, 1809.

By the judiciary act of February 24th, 1806, the counties of Berks, Northampton and Wayne compose the third district. The courts are held on the first Mondays of January, April, August and November. The term continues two weeks.

Berks county is part of the Lancaster district of the Supreme Court, by act of March 11th, 1809.

Reading erected into a borough, September 12th, 1783, (chap. 1020.)

## CHAPTER CCCXCIII.

*An ACT for erecting the northwest part of Bucks into a separate county.*

**WHEREAS** a great number of the inhabitants of the upper parts of the county of Bucks, by their petition, have humbly represented to the governor and assembly of this province the great hardships they lay under, by being so remote from the present seat of judicature, and the public offices, that the necessary means to be used for obtaining justice is attended with so much difficulty and expense, that many forego their right, rather than attempt the recovery of it under such circumstances, while others, sensible of these difficulties, commit great villanies with impunity. For remedying

whereof, and for relief of the inhabitants, *Be it enacted*, That all and singular the lands, lying within the province of Pennsylvania aforesaid, be erected into a county, and the same is hereby erected into a county, named, and henceforth to be called, Northampton; to be divided from the county of Bucks by the upper or northwestward line of Durham tract, to the upper corner thereof; then by a straight line to be run southwestwardly to the line dividing the townships of upper and lower Milford; then along the said line to the line dividing Philadelphia and Bucks counties; and then by that line to the extremity of the said province.

1752.  
Boundaries  
of the county  
of Northamp-  
ton.

II. *And be it further enacted*, That the inhabitants of the said county shall, at all times hereafter, have and enjoy all and singular the jurisdictions, powers, rights, liberties and privileges whatsoever, which the inhabitants of any other county within the said province do, may, or ought to enjoy, by any charter of privileges, or the laws of this province, or by any other ways or means whatsoever, excepting only in the number of representatives to serve in general assembly of this province; in which case it is *provided, and further enacted by the authority aforesaid*, That until it shall be otherwise ordered by the governor and assembly of this province, the freemen and inhabitants of the said county, qualified by the laws of this province, to elect, shall annually meet at or near the place where the courthouse is intended to be built for the said county, at the same time the inhabitants of the other counties of this province shall meet for like purposes, and there proceed to choose inspectors, and to elect one representative, or delegate, to serve them in assembly, in the same manner as by the charter and laws of this province is directed in respect to other counties; which said representative, when so chosen, shall be a member of the general assembly of the province of Pennsylvania, and sit and act as such as fully and freely as any of the representatives for the other counties within this province do, may, can, or ought to do.

The inhabi-  
tants there-  
of to elect  
one repre-  
sentative in  
assembly.  
This provise  
repealed by  
an act passed  
December  
14th, 1774,  
(chap. 699.)  
now also ob-  
solete.)

IV. *And be it further enacted*, That the justices of the supreme court of this province shall have like powers, jurisdictions and authorities, within the said county of Northampton, as by law they are vested with, and entitled unto, in the other counties within the province aforesaid; and are hereby authorized and empowered, from time to time, to deliver the gaols of the said county of capital or other offenders, in like manner as they are authorized to do in other the counties aforesaid.

Jurisdiction  
of the Su-  
preme Court  
and

V. *And be it further enacted*, That there shall be a competent number of justices nominated and authorized by the governor for the time being, by commissions under the broad seal of the province; which said justices, or any three of them, shall and may hold Courts of General Quarter Sessions of the Peace and Gaol Delivery, and County Courts for holding of Pleas; and shall have all and singular the powers, rights, jurisdictions and authorities, to all intents and purposes, as other the Justices of Courts of General Quarter Sessions, and Justices of the County Courts for holding of Pleas, in the other counties aforesaid, may, can, or ought to have in their respective counties; which said courts shall, from and after the publication of this act, sit and be held for the said county of

County  
Court esta-  
blished.



1752. Northampton, on the third day of the week, commonly called Tuesday, next ensuing Bucks county court, in every of the months called March, June, September and December, in every year, at Easton, on Lehiatan, in the forks of the river Delaware, until a court-house shall be built; and when the same is built and erected in the county aforesaid, the said several courts shall then be holden and kept at the said court-house, on the days before mentioned. And the election of a representative to serve in general assembly, assessors, and all other officers of the said county, who are or shall be appointed to be annually elected, shall be made and elected at or near the said court-house, at the same time, and in the same manner, as by the charter of privileges, and laws of the province aforesaid, is directed to be done in other counties within this province. And it shall be lawful for the freemen of the said county, for the first year, to choose three commissioners, for raising county rates and levies for the said county.

Passed 11th March, 1752.—Recorded A. vol. III. page 269. (x)

(x) The sections omitted contained the usual temporary provisions, as in the preceding and other acts for the erection of new counties, and are all now obsolete.

Certain islands in the Delaware annexed to the jurisdiction of Northampton county. September 25th, 1786, (chap. 1234.)

Commissioners appointed to run the lines between Northampton, Berks, and Northumberland. April 17th, 1795. (chap. 1837.)

All that part of Northampton, northward of a line beginning at the west end of *George Michael's* farm, on the river Delaware, in Middle Smithfield township, and from thence a straight line to the mouth of Grout Creek on the Lehigh, adjoining Luzerne county, erected into the county of Wayne. March 21st, 1798, (chap. 1975.)

By the last enumeration, the counties of Northampton and Wayne contained seven thousand one hundred and thirty taxables, and by act of March 21st, 1808, (chap. 2931,) together send five members to the House of Representatives, and two members to the Senate.

Northampton was divided into four election districts, by the act of September, 1785, (chap. 1164.)

The fourth district divided, and the fifth district established, March 5th, 1791, (chap. 1519.)

The sixth and seventh districts es-

tablished, February 5th, 1794, (chap. 1698.)

Another district established March 31st, 1797, (chap. 1931.)

A new election district, called the eighth district, established April 10th, 1799, (chap. 2064.)

Penn district, erected January 15th, 1802, (chap. 2207.)

The place of holding the fourth election district altered, March 1st, 1802, (chap. 2237.)

Lower Saucon district, established April 2d, 1802, chap. 2266.)

Wisenberg and Lynn townships, erected into a separate district, March 12th, 1804, (chap. 2445.)

*Mensch's* district established, and the place of holding elections in the second district changed, March 31st, 1806, (chap. 2715.)

Place of holding elections for part of Allen township fixed, April 11th, 1807, (chap. 2856.)

Moore township erected into a separate district, March 20th, 1810.

By the Judiciary act of February 24th, 1806, Northampton, Berks, and Wayne compose the third district. The courts are held on the third Mondays of January, April, August, and November. The term continues two weeks.

Northampton is part of the eastern district of the Supreme Court.

Easton erected into a Borough, September 23d, 1789, (chap. 1427.)

## CHAPTER CCCXCV.

1752.

*An ACT to prevent disputes about the dates of conveyances, and other instruments and writings.*

**WHEREAS** by an act of parliament, made in the twenty-fourth year of the present reign, entitled *An act for regulating the commencement of the year, and for correcting the calendar now in use*, it is enacted, That in and throughout all his majesty's dominions and countries in Europe, Asia, Africa and America, belonging or subject to the crown of Great-Britain, the supputation, according to which the year of our Lord beginneth on the twenty-fifth day of March, should not be made use of from and after the last day of December, one thousand seven hundred and fifty-one, and that the first day of January, next following the said last day of December, should be reckoned, taken, deemed and accounted, to be the first day of the year of our Lord one thousand seven hundred and fifty-two, and so on, from time to time, the first day of January in every year, which should happen in time to come, should be reckoned, taken, deemed and accounted, to be the first day of the year; and that each new year should accordingly commence and begin to be reckoned from the first day of every such month of January next, preceding the twenty-fifth day of March, on which such year would, according to the supputation aforesaid, have begun or commenced; and that all acts, deeds, writings, notes and other instruments, of what nature or kind soever, which should be made, executed or signed, upon or after the said first day of January, one thousand seven hundred and fifty-two, should bear date according to the new method of supputation: And whereas, for the ease of the inhabitants of this province, who scrupled to call the names of the months as they were commonly called, but the month which others called March they called the first month, and so of the rest of the months of the year, according to the old supputation of the year, beginning on the twenty-fifth day of the month called March, then generally received throughout the king's dominions, an act of the general assembly of this province was passed in the ninth year of the late queen Anne, entitled *An act to prevent disputes which may hereafter arise about the dates of conveyances, and other instruments and writings*, whereby it was enacted, that all instruments and writings whatsoever, wherein the names of the months were called the first, second; third, and fourth, instead of March, April, May and June, and so of the rest, should be judged and taken as valid and effectual in law, as if the months in such writings had been set down and expressed by the usual names.

**II.** And forasmuch as many of the sober inhabitants of this province are still conscientiously scrupulous of calling the names of the months as they are usually called, yet hold themselves in duty bound to comply with the act of parliament herein before recited: Therefore, for preventing disputes and controversies concerning the dates of such instruments and writings, since the passing of the act of parliament aforesaid, *Be it enacted*, That all deeds, conveyances, mortgages, letters of attorney, or powers of agency, commissions, bonds, bills, charterparties, leases, releases, contracts, articles, receipts, and all other instruments and writings whatsoever, since the first day of the

Recital of an act of Parliament regulating the commencement of the year. [24 Geo. 2. chap. 23.]

Of an act of assembly about the names of the months:

Which is hereby supplied:



1752. month called January last, wherein the names of the months are called first, second, third and fourth, instead of January, February, March, April, and so of the rest, accounting always the month called January to be the first month of the year, shall and are hereby enacted and declared to be as good and available, and may be pleaded, and shall be deemed, adjudged and taken, in all courts of judicature, and elsewhere, within this province, to be as valid and effectual in law, to all intents, constructions and purposes, as if the months in such writings had been set down and expressed by their usual names, any law, custom or usage, to the contrary thereof in any wise notwithstanding.

And repealed,  
(chap.  
175.)

III. *And be it further enacted*, That the act of assembly aforesaid, entitled *An act to prevent disputes which may hereafter arise about the dates of conveyances, and other instruments and writings*, passed in the ninth year of the late queen Anne, and every clause, part and paragraph thereof, shall be and is hereby repealed and made void.

Passed 11th March, 1752.—Recorded A. vol. III. page 299.

## CHAPTER CCCXCVIII.

*An ACT for regulating and establishing fees. (y)*

XXXVIII. *AND be it further enacted*, That no attorney or practitioner at law shall be admitted to make any plea at the bar, except in his own case, without taking the following qualification by oath or affirmation, viz.

Attorney's  
qualification.

*THOU shalt behave thyself in the office of attorney within the court according to the best of thy learning and ability, and with all good fidelity, as well to the Court as to the client: Thou shalt use no falsehood, nor delay any person's cause for lucre or malice.*

Passed 22d August, 1752.—Recorded A. vol. III. page 255.

(y) This act was supplied, (chap. 1852,) and repealed by a general declaration, that "From and after the 1st day of October, 1795, the several laws of this commonwealth for regulating fees shall be repealed." The 38th section seems, however, not to have been within the design of the repeal, and is, therefore, preserved in this republication.

## CHAPTER CCCXCIX.

*An ACT for regulating attachments not exceeding five pounds. (z)*

WHEREAS in the execution of a law of this province, passed in the twelfth year of the reign of king William the third, entitled *An act about attachments under forty shillings* many fraudulent practices have happened, not only to the injury of such creditors, whose demands have exceeded the sums in the said act limited, but of such other creditors also as were willing to accept of an equal share

(z) For a general reference to the laws and adjudications in cases of foreign and domestic attachments, see ante. chap. 142, page 45, and chap. 263, page 158, and the notes thereto subjoined.

of their debtors effects, in proportion to their demands, and not have them wasted in needless prosecutions: And whereas the legal proceedings now used for the recovery of debts above forty shillings, and not exceeding five pounds, by attachments, are generally attended with so much expense as to consume a large part of the debtor's estate, to the great loss and injury of both debtors and creditors:

**For remedying these evils, *Be it enacted*,** That if any person shall absent him or herself out of this government, or abscond from his or her usual place of abode,\* not taking care to satisfy his or her just debts, it shall and may be lawful for any Justice of the Peace of the county, where such person's estate may be found, to grant a writ of attachment for any debt not exceeding five pounds,† directed to any constable of the same county, to attach the goods and chattels or other effects of such person, to answer the creditor; but, before the granting any such attachment, the person or persons requesting the same, or some other credible person or persons for him or them, shall, upon oath or affirmation, declare that the defendant, in such attachment, is indebted to the plaintiff therein named in a sum not exceeding five pounds, and that the defendant is and has been absconded from the place of his usual abode for the space of six days, with design to defraud his creditors, as is believed, and that the defendant has not left a clear fee-simple estate in lands or tenements within this province sufficient to pay his debts, so far as the plaintiff or deponent knows or believes; which oath or affirmation the Justice of the Peace, that grants such writ, is hereby empowered and required to administer: And if any attachment be granted out otherwise, or contrary to the true intent and meaning hereof, the Justice of the Peace so granting the same shall, for every such offence, forfeit the sum of five pounds, for the use of him or her that will sue for the same.

**II. *And be it further enacted*,** That as soon as the Justice of the Peace, before whom the writ of attachment is returnable, accepts the constable's return thereof, the said Justice shall immediately appoint two substantial freeholders to take into their custody, all the goods and chattels attached, for which they shall be accountable, until they shall dispose of the same as hereinafter is directed, and shall also forthwith publish his said proceedings by advertisements, in the most public places near the late dwelling-place of the person, so as aforesaid absenting, and likewise in one or more of the public newspapers within this province, appointing the time and place for all the creditors of the person, against whose effects and estate the attachment is granted, to appear, then and there to discover and make proof of their demands; and if, after a full and careful examination, it shall appear that there is a just debt due to any one person from the said defendant, exceeding the sum of five pounds, that then, and in every such case, the said Justice of the Peace shall no further proceed, but shall deliver and certify to the prothonotary of the county court of common pleas for the same county the said attachment, and all proceedings thereon had before him: whereupon it shall and may be lawful for the Justices of the said court to grant and issue one writ of attachment only to the person or persons, who obtained the said attachment from the said Justice of the Peace, if

1752.

Goods of debtors absenting themselves may be attached.  
\*Or confine or conceal himself, &c. (chap. 2873, sect. 15.)  
†See the act of December 4th, 1807, (post. chap. 2873, sect. 15.) the jurisdiction extended to one hundred dollars.

Penalty on Justices acting contrary. [now one hundred dollars, (chap. 2873, sect. 15.)]

Form of process.

If a debt above five pounds appears, the proceedings to be transmitted to the Court of Common Pleas. [Now one hundred dollars. (see chap. 2873, sect. 15.)]



1752. he demands the same, or if not, then to any other creditor of the defendant, to the Sheriff of the same county directed, requiring him to attach all the goods, chattels, rights and credits, lands, tenements and hereditaments, of the said defendant, within his bailiwick; by virtue of which writ, the said Sheriff shall, together with the residue of the said defendant's real and personal estate in the same county, attach and take into his custody all the goods and chattels of the said defendant, or the product of such part of them as may be sold according to the direction of this act, then in the hands and possession of the said freeholders: And that upon the return of the said writ of attachment by the said Sheriff, the Justices of the said Court of Common Pleas, and all other persons acting under their authority, shall proceed thereon in like manner, and shall have the same jurisdiction and powers for the discovering, selling, collecting, compelling payment of, receiving, and distributing the estate, real and personal, of the defendant amongst his creditors, as they might or could have had, if the said writ of attachment had, according to the laws of this province heretofore made, issued out of the same court.

No second attachment to issue in the same county. See chap. 2873, sect. 17.

III. *And be it further enacted*, That when any attachment shall be granted by any Justice of the Peace, or any writ of attachment shall issue out of any County Court, according to the directions of this act, no second or other attachment, or writ of attachment, granted or issued by the said Justice, or any other Justice within the same county, or by the Justices of the same County Court, against the real or personal estate of the same defendant, or the execution of them, or any of them, shall bind or affect the right, title, interest or property, of or in the real or personal estate of the same defendant within the same county, or any part thereof, while the proceedings on the said first attachment, or writ of attachment, remain undetermined, any law, usage or custom of this province to the contrary notwithstanding.

Chargeable and perishable goods may be sold after six days notice.

IV. *And be it further enacted*, That when the said Justice of the Peace shall accept of the return of an attachment from the constable, as above directed, if it shall appear to the same Justice, that any cattle or other chattels necessary to be maintained at expense, or any perishable goods, have been attached by virtue of the same attachment, it shall and may be lawful for the same Justice to order sale of them to be made by the said freeholders within ten days, of which public notice shall be given, at least six days before the sale thereof, by advertisements, to be set up at the most public places near the place of sale: and that the money arising therefrom shall be lodged in the hands of the freeholders aforesaid, to be attached or distributed among the creditors, in the manner herein before or hereafter directed and appointed.

The residue to remain unsold three months. [\*Now 100 dollars.]

V. *And be it further enacted*, That if no such debt exceeding five pounds\* shall, to the said Justice of the Peace, appear to be due from the said defendant, then the said goods, chattels and other effects, in the hands of the said freeholders, shall be brought to an appraisement, but not sold, except as is herein before excepted, until the expiration of three months next after the granting the attachment, to the end that the debtor may have time to redeem them, if

he see cause, any law of this government to the contrary in any wise notwithstanding. And if after the expiration of three months as aforesaid, the debtor shall not appear and redeem them, on notice thereof given to the Justice of the Peace, he shall forthwith order and direct the said freeholders to make sale thereof; and out of the money arising therefrom, and all other money then in their hands, from any part of the defendant's estate arising, reasonable charges first deducted, to make payment to the creditors, who shall appear and make proof of their debts within the said three months, in proportion of their respective debts; and the overplus, if any, to be returned to the owner: But before any such sale is made, the freeholders aforesaid shall give at least ten days notice thereof, by advertising in the most public places the time and place of such sale. And that the constable shall receive two shillings for serving an attachment, and three shillings for serving an execution, and no more.

1752.

Ten days  
before sale  
public notice  
to be given  
thereof.

**VI.** *And be it further enacted,* That the freeholders aforesaid, within six days next after making sale and distribution, as is herein before directed, shall render a true account of their proceedings to the Justice of the Peace, who granted the attachment, to be by him kept as a record of their proceedings therein.

**VII.** *And be it further enacted,* That the act of General Assembly of this province aforesaid, entitled *An Act about attachments under forty shillings*, passed in the twelfth year of the late King William the third, be, and it is hereby, repealed and made void.

Repeal of a  
former act.  
[Chap. 29.]

Passed 22d August, 1752.—Recorded A. vol. III. page 249.



# A C T S

OF THE

## General Assembly of Pennsylvania.

Passed at a Session which commenced October 14th, 1758,  
and ended September 30th, 1759.

1759.

WILLIAM DENNY, LIEUTENANT GOVERNOR.

### CHAPTER CCCCXXXIX.

*An ACT to prevent the exportation of bad or unmerchantable staves, heading, boards and timber.*

**WHEREAS** the reputation of this province hath been much advanced, by the care of the Legislature to prevent frauds and abuses in divers commodities of our country produce exported to foreign markets, and yet some further regulation is, by daily experience, found necessary to promote the interests of trade, and the good of the province: *Be it therefore enacted*, That no merchant, or other person or persons whatsoever, shall, from and after the publication of this act, lade or put on board any ship or vessels any staves, heading, boards, plank or timber, for exportation out of this province, before he or she shall first submit the same to the examination of the officer or officers, or his or their deputy or deputies, appointed by the direction of this act; and if the said officer or officers shall find the same sound, and fit for exportation, he or they shall measure, count and cull the same, in a just and impartial manner, between the buyer and seller.

**II.** *And be it enacted*, That every hewed or shaved pipe stave shall be four feet and eight inches long, three inches and a half broad in the narrowest place, clear of sap, five eighths of an inch thick in the thinnest place, nor more than one inch thick in any part, regularly split with the grain of the wood, and shall not have more than seven worm holes, and be otherwise fit for a good pipe stave.

No staves,  
&c. to be  
exported,  
without be-  
ing examin-  
ed, &c.

Dimensions  
of Pipe,  
Hogshead,  
and Barrel  
staves, &c.

Every hewed or shaved hogshead stave shall be three feet and six inches long, three inches and a half broad, clear of sap, in the narrowest place, five eighths of an inch thick in the thinnest part, not more than one inch thick in any part, regularly split with the grain of the wood, and shall not have more than six worm holes, and be otherwise fit for a good hogshead stave.

Every hewed or shaved barrel stave shall be two feet and six inches long, three inches and an half broad in the narrowest place, half an inch thick in the thinnest part, regularly split with the grain of the wood, and shall not have more than five worm holes, and be otherwise fit for a good tight barrel stave.

Every hewed or shaved piece of hogshead heading shall be two feet and six inches long, the middle pieces six inches broad in the narrowest place, clear of sap, and the cantle pieces of the same breadth in their widest part, clear of sap, both sorts three quarters of an inch thick, and shall not have more than seven worm holes in each piece, and be otherwise fit for the head of a tight hogshead; the officer having a due regard that there be always a proper proportion of middle pieces in such heading.

All boards, plank and timber, shall be good and sound, and of the thickness and quality the same are declared to be by the seller.

III. [This section related to the fees for inspecting staves and heading, and is supplied and repealed by the act of April 5th, 1790, sect. 5, (chap. 1501.) And by act of March 20th, 1810, the inspector of staves and heading shall be entitled to receive from the exporter of the same, for every customary thousand thereof, twenty-five cents.]

IV. [Related to the fees for measuring plank and boards, and is supplied and repealed by the act of April 20th, 1795, sect. 1, (chap. 1852.)]

V. *Provided always*, That any person or persons may be allowed to vend or sell any rough staves or heading: and if they be of the length, breadth and qualities, before mentioned, they shall not be adjudged unfit for exportation, although they should be thicker than is herein before mentioned.

VI. *And be it further enacted*, That the officer hereby appointed, or to be appointed, or his deputy or deputies, shall have power and authority, by virtue of this act, without any further or other warrant, to enter on board any ship, sloop or other vessel, lying and being in the port of Philadelphia, or in any other place within this province, to search for and make discovery of any staves, heading, boards, plank and timber, shipped for exportation; and if the captain, master or owner, of such ship or other vessel, or his or their servant or servants, shall deny him or them entrance, or if the said officer shall be any way molested in making any discovery as aforesaid, or if such captain, master or owner, shall refuse to permit the said officer or his deputies to view, inspect and examine any of the said staves and merchandize aforesaid, according to the directions of this act, every person, so offending, shall forfeit and pay the sum of fifty pounds; or if any person shall ship off any staves, heading, boards, plank or timber, which have not been inspected, measured, culled and counted, as aforesaid, by the officer appointed for that

Officer to enter any vessel, and search for staves, &c. for exportation.



1759.

purpose, or his deputy, every such person, so offending, shall forfeit and pay the sum of twenty shillings for every thousand of staves or heading, and ten shillings for every thousand feet of boards, plank or timber, so shipped or exported, and so in proportion for any greater or lesser quantity.

Disputes arising concerning staves, &c. to be decided by applying to a Magistrate, &c.

VII. *Provided always, and be it further enacted*, That where at any time hereafter any dispute shall arise between the officer and possessor of any of the staves and merchandize herein before mentioned, concerning the same, upon application made by the possessor thereof to one of the Magistrates of the county where the dispute arises, he shall issue his warrant to three indifferent judicious persons of skill and integrity, one of them to be named by the possessor of such staves and merchandize, a second by the officer, and the third person to be named by the said Magistrate, directing them, the persons so named, to view and examine the said staves and merchandize, and make report to him forthwith as they find the same, and the said Justice is hereby required and empowered to give judgment accordingly.

Penalty on exporting staves, &c. not merchantable.

VIII. And in case the said staves, heading, boards, plank and timber, or any of them, be adjudged not fit for exportation, the said Justice of the Peace shall order them not to be exported, under penalty of forfeiture of all such staves, heading, boards, plank or timber, and shall also award and order the owner or possessor thereof to pay the said officer reasonable costs and charges, for his trouble in attending such trial, &c. but if the said staves and merchandize shall be found good and merchantable, according to the direction of this act, the charges of prosecution shall be paid by the officer.

IX. X. [*Hugh Davey* appointed Inspector ; vacancies to be supplied by the Justices of Philadelphia county—Repealed by the existing constitution, which vests the appointment to all offices in the Governor. And by act of March 17th, 1796, the inspection of staves and heading shall be vested in an officer, other than the Inspector of boards, timber and shingles, to be appointed by the Governor, whose duties and compensation shall be the same as now enjoined on and allowed to the present inspector of lumber in like cases. (Chap. 1869.)]

The officer to be qualified.

XI. But before the said *Hugh Davey*, or any other officer hereafter to be appointed by virtue of this act, or any of his or their deputies, shall do any thing in the execution of his or their office, they shall respectively take and subscribe an oath or affirmation, before some Justice of the Peace of the city or county of Philadelphia, faithfully and impartially to perform his or their duty and trust, to the best of his or their capacity, according to the direction of this present act ; which oath or affirmation the said Justices are hereby authorized and required to administer, at the expense of the said officer, and the same shall be entered in the public records of this province.

And to keep true accounts of the staves, &c.

XII. *And be it further enacted*, That the officer appointed, or to be appointed by virtue of this act, shall keep true accounts of the staves, and other merchandize by him or his deputies inspected, culled, counted, and measured, and of the names of the buyers and sellers thereof : and if any controversy shall happen to arise concerning the same, he or

they may be called upon to shew his or their book of entries, for which trouble, and copy of the entry, he or they shall be allowed the sum of six pence, and no more ; and if he or they shall be convicted of making a fraudulent entry, he shall be liable to pay the sum of five pounds : And if the said officer or officers shall be convicted of buying or selling any of the staves and other merchandize, which he or they are appointed to inspect and examine, he or they, so offending, shall be subject to the penalty of fifty pounds.

1759.

**XIII.** *Provided always,* That nothing herein contained shall debar any cooper or carpenter from purchasing a sufficient quantity of staves or heading, boards, plank or timber, to make up into casks, or to be used in buildings, in the way of his or their business, so always, that he shall not buy any of the cullings, which he hath before adjudged to be unmerchantable.

Cooper or  
carpenter,  
not within  
this act.  
[So, as to  
coopers,  
chap. 1501,  
sect. 5.]

**XIV.** *And be it further enacted,* That all and every the penalties and forfeitures in and by this act set and appointed shall be paid, one half to the contributors of the Pennsylvania Hospital, for the use of the said Hospital, and the other half to the informer, or to him or them who shall sue for the same ; if under five pounds, to be recovered as debts under five pounds are usually recovered, and if above five pounds, to be sued for by bill, plaint, or information, in any court of record within this province, wherein no essoin, protection, or wager of law, shall be allowed the defendant.

Penalties  
how to be  
disposed of.

**XV.** And every of the officers appointed by this act shall, if he so long behave himself well in the execution of his said office, continue therein for the space of four years, and from thence until a new nomination be made by the Assembly, and no longer. [Obsolete.]

The officer  
to continue  
four years.

Passed 21st April, 1759.—Recorded A. vol. IV. page 100. (a)

(a) A supplement was added to this act, (post. chap. 469,) but it was repealed by chap. 562, post.

By chap. 562, post. it was enacted, that staves, heading, boards, plank or timber, should not be shipped for exportation, before they were inspected, which inspection should take place, as near as conveniently might be, to the time of the lading, provided it was within forty-eight hours thereof ; a penalty was imposed on any exporter, who should mix cullings, or unmerchantable staves or heading, with what has been inspected, and adjudged merchantable ; and the deputies were directed, under a penalty, to report their proceedings to the principal inspector, within six hours after culling any quantity of staves or heading, in order that the inspector may enter the same in his books.

By an act of the fifth of April, 1790, (chap. 1501,) it was enacted, that staves and heading brought into Philadelphia, the district of Southwark, or the Northern Liberties, shall, before they are delivered to the consignee or pur-

chaser, and before they are received into any lumber yard or other place, for sale, or exportation, be inspected and culled by the proper officer, subject to the forfeiture of the staves or heading delivered or received contrary to the act ; it was declared that if any person should mix any staves or headings, adjudged merchantable, with any cullings, or unmerchantable or uninspected staves or headings, he shall forfeit the whole so mixed ; it was provided that Leogan staves, used for sugar hogsheads, might lawfully be exported, provided they are four feet six inches long, three inches and an half broad, including sap, if it be sound, and half an inch thick, subject nevertheless to the same inspection as other staves ; the fees of the inspector were regulated (but see the existing law on that subject, chap. 1852 ; ) coopers were permitted to purchase a sufficient quantity of staves or heading, uninspected and unculled, to make up into casks, or to use in the way of their business within the state ; so much of the former acts, as this act altered, was de-



1759. clared to be repealed, and a penalty was imposed on any person, who should act as a deputy-inspector without lawful authority.

By an act of the 29th of September, 1789, (chap. 1440,) the inspection of shingles was regulated, and subjected to the same officer that should be appointed inspector of staves and heading. But this act was altered, and suspended till the 1st of January, 1791, by an act of the 5th of April, 1790, 3d vol. chap. 1503. (*Note to former edition.*)

[See the act of March 17th, 1796, (chap. 1869.) The inspector of staves and heading, to be a different officer from the inspector of lumber.

A supplement to the act in the text was passed March 30th, 1803, (post. chap. 2462,) that no staves shall be deemed as merchantable and fit for exportation, which are not three inches wide, and otherwise conformable to the act to which this is a supplement.]

See chap. 295, (ante. pa. 170,) and the notes thereto subjoined.

# A C T S

OF THE

## General Assembly of Pennsylvania,

Passed at a Session which commenced October 15th, 1759,  
and ended April 21st, 1760.

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JAMES HAMILTON, LIEUTENANT GOVERNOR.

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1760.

### CHAPTER CCCCLIV.

*An ACT to enable the owners and possessors of the meadow at Point-no-Point, in the precinct of Richmond, in the county of Philadelphia, to keep the banks, dams, sluices and flood-gates in repair, and to raise a fund to defray the expense thereof.*

Passed 12th April, 1760.—Private Act.—Recorded A. vol. IV. page 182.

[The title sufficiently explains the subject matter of this act.]

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### CHAPTER CCCCLV.

*An ACT to enable the owners of Greenwich island to embank and drain the same, to keep the outside banks and dams in good repair for ever, and to raise a fund to defray sundry contingent and yearly expenses accruing thereon.*

Passed 12th April, 1760.—Private Act.—Recorded A. vol. IV. page 171.

[The subject matter fully explained by the title.]

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### CHAPTER CCCCLVI.

*An ACT to prevent the hunting of deer, and other wild beasts, beyond the limits of the lands purchased of the Indians by the Proprietaries of this province, and against killing deer out of season.*

[WHEREAS many disorderly people have made it a practice of hunting on the lands not yet purchased of the Indians, to their



1760.

Penalty on persons hunting on Indian lands, not purchased by the Proprietaries. &c. [All the land in the State being now purchased of the Indians, this section is obsolete.]

great damage and dissatisfaction, which may be attended with fatal consequences to the peace and welfare of this province, by destroying that union and harmony, which this government has lately restored and concluded with the Indians, at a very great expense : And whereas many of the industrious inhabitants, on the frontiers of this province, are thereby discouraged from returning and settling upon the plantations, which they were obliged to leave and evacuate during the late Indian incursions : Therefore to remedy the great mischiefs which may ensue from the continuance of this evil practice, *Be it enacted*, That if any person or persons whatsoever, either singly, or in companies, after the passing of this act, shall presume to hunt, chase or follow any deer, buck, doe, fawn, or any other wild beast, wild fowl, or game, whatsoever, or shall set traps for beaver, or other beasts, without the limits of the lands purchased of the Indians by the Proprietaries of this province, such person or persons, so offending, and being thereof legally convicted, in any Court of Quarter Sessions of the county where such offender shall be apprehended (in which said court the same offence is hereby made cognizable,) by the oath or affirmation of one or more witnesses, or by the confession of the party, every person, so offending, shall forfeit and pay, for every such offence, the sum of fifty pounds, or suffer twelve months imprisonment, without bail or mainprize ; one moiety of the above fine shall be paid to the prosecutor, and the other moiety to the Overseers of the Poor of the township where such offender shall reside, for the use of the poor of the said township, if resident within this province ; if otherwise, where he shall be apprehended.]

Constables to present offences against this act.

II. *And be it further enacted*, That the constable of each respective township, in every county of this province, having any knowledge of any offences against this act, shall, and he is hereby required, under the penalty of five pounds, to present, on oath or affirmation, every such offence to some one Justice of the Peace of their respective counties, or before the Justices of the General Quarter Sessions of the Peace for the same county, together with the name or names of all such offenders, that they may be tried, agreeable to the directions of this act.

Forfeitures on persons hunting, except in the time limited by this act.

III. *And be it further enacted*, That if any person or persons shall, after the publication of this act, hunt, chase or follow, with a design to kill, or shall kill or destroy, any buck, doe or fawn, within the lands already, or hereafter to be purchased of the Indians, at any other time or season, excepting only between the first day of the month of August and the first day of the month of January, and shall be lawfully convicted thereof, by the oaths or affirmations of one or more credible witnesses, or the confession of the party, before one or more Justices of the Peace for the respective county, where such offence shall be committed, he or they shall forfeit and pay the sum of three pounds for every such offence, to the uses aforesaid ; provided such conviction be made within six months after such offence committed.

Manner of convicting offenders,

IV. And for the more certain convicting of offenders against this act, *Be it further enacted*, That every person, in whose custody shall be found, or who shall expose to sale, any green deer skins,

fresh venison, or deer's flesh, at any other time of the year than what is before excepted, such green deer skins, fresh venison, or deer's flesh, shall be deemed and taken as evidence of the guilt of the person, in whose custody the same shall be found. 1760.

V. *Provided always*, That nothing contained in this act shall be deemed or construed to extend to any free native Indians carrying guns, hunting, killing, and having in their custody any skins or deer's flesh for their own use, any thing in this act to the contrary notwithstanding.

VI. And whereas divers abuses, damages and inconveniences, have arisen by persons carrying, guns and presuming to hunt on other people's lands: For remedy whereof, for the future, *Be it enacted*, That if any person or persons shall presume, at any time after the publication of this act, to carry any gun, or hunt on any inclosed or improved lands of any of the inhabitants of this province, other than his own, unless he shall have licence or permission from the owner of such lands, or shall presume to fire a gun on or near any of the king's highways, and shall be thereof convicted, either upon view of any Justice of the Peace within this province, or by the oath or affirmation of any one or more witnesses, before any Justice of the Peace, he shall, for every such offence, forfeit the sum of forty shillings.

Penalty on persons hunting upon other lands than their own.

VII. *And be it further enacted*, That no person whatsoever shall presume to shoot at, or kill with a fire-arm, any pidgeon, dove, partridge, or other fowl, in the open streets of the city of Philadelphia, or in the gardens, orchards and inclosures, adjoining upon, and belonging to any of the dwelling-houses within the limits of the said city, or suburbs thereof, or any of the boroughs or towns within this province, upon the forfeiture of forty shillings for every such offence, to be convicted in manner aforesaid.

No person to shoot pidgeons, &c. in the streets of Philadelphia, &c.

VIII. *And be it further enacted*, That if any person or persons shall hunt or kill any kind of game on the Sabbath-day, and shall be convicted thereof in manner last aforesaid, every such offender shall forfeit and pay the sum of forty shillings for every such offence.

Nor to kill any game on the sabbath-day.

IX. All which penalties and forfeitures, not herein before appropriated, shall be paid, one moiety thereof to the informer, and the other to the overseers of the poor of the township where such offence is committed, for the use of the poor of the said township; but if convicted upon view of a Justice of the Peace, the whole forfeiture shall be paid to the overseers of the poor of the said township, for the use of the poor of said township; and if the offender refuse to pay, the same shall be levied by distress and sale of the offender's goods, by warrant, under the hand and seal of the Justice before whom such offender shall be convicted, returning the overplus, if any, to the owner, the charge of distraining being first deducted; and for want of such distress, he shall be committed to prison, where the forfeiture is three pounds, for the space of thirty days; and where the forfeiture is forty shillings, for the space of twenty days, without bail or mainprize; and if such offender be a negro, or mulatto slave, he shall, instead of such imprisonment, be publicly whipped, at the direction of the magistrate, not exceeding

Manner of appropriating forfeitures, &c.



1760. thirty-one lashes, unless the master or mistress of such slave shall pay the fine or fines hereby inflicted.

Repeal of  
former acts.

\*Chap. 246.

†Chap. 323.

‡Chap. 383.

X. *And be it enacted, That the act entitled An act to prevent the killing of deer out of season, and against carrying of guns and hunting by persons not qualified;\** and the act, entitled *a supplement to the law, entitled an act to prevent the killing of deer out of season, and against carrying of guns and hunting by persons not qualified;†* and an act, entitled, *An act for amending the laws of this province against killing of deer out of season,‡* and every article, clause and thing, in the said acts, and each and every of them, contained, shall be and hereby are declared to be repealed, null and void, to all intents and purposes whatsoever.

Passed 9th April, 1760.—Recorded A. vol. IV. page 192.

# A C T S

OF THE

## General Assembly of Pennsylvania.

Passed at a Session which commenced October 14th, 1760,  
and ended September 26th, 1761.

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JAMES HAMILTON, LIEUTENANT GOVERNOR

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1761.

### CHAPTER CCCCLVIII.

*An ACT to enable the owners and possessors of the northern district of Kingsess meadow land, in the county of Philadelphia, to keep the banks, dams, sluices and flood-gates, in repair, and to raise a fund to defray the expense thereof.*

Passed 14th March, 1761.—Private Act.—Recorded A. vol. IV. page 197.

[The subject of this act is fully explained in the title.]

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### CHAPTER CCCCLXII.

*An ACT to enable the owners and possessors of the meadow, at the west side of the mouth of Darby creek, by the river Delaware, in the township of Ridley, in Chester county, to keep the banks, dams, sluices, and flood-gates, in repair for ever; and to raise a fund to defray the expense thereof.*

Passed 14th March, 1761.—Private Act.—Recorded A. vol. IV. page 206.

[The title fully explains the subject of this act.]

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### CHAPTER CCCCLXIII.

*An ACT for the preservation of fish in the rivers Delaware, Susquehanna, and the Lehigh, commonly called the Western Branch of Delaware.*

**WHEREAS** it is found by experience, that large quantities of the fry and brood of fish, as well as young fish unfit for use, have



1761.

Penalty on  
erecting  
wears, &c.

been, for many years past, killed and destroyed by wears, racks, baskets, dams, pounds, and other like engines and devices, formed and erected in the rivers Delaware, Susquehanna, and the Lehigh, commonly called The Western Branch of Delaware, for taking of larger fish, whereby the great quantities of fish, which were formerly to be found and taken in the said rivers, are much diminished, to the great damage and injury of the public : For remedy whereof, *Be it enacted*, That if any person or persons whatsoever, from and after the publication of this act, shall erect, build, set up, repair or maintain, or shall be aiding, assisting or abetting, in erecting, building, setting up, repairing or maintaining, any wear, rack, baskets, fishing-dam, pound, or other device whatsoever, for the taking of fish within the said rivers, or any or either of them ; or that shall fix or fasten any net or nets across, or in any of the said rivers, or any part thereof, by which the fish may be obstructed from going up the said rivers ; or that shall take, destroy, or spoil any spawn, fry or brood of fish, or any kind of fish whatsoever, in any such wear, rack, baskets, fishing-dam, pound, or other device aforesaid ; every such person or persons so offending, contrary to the true intent and meaning of this act, being legally convicted thereof, by the oath or affirmation of one or more credible witnesses, or by his own confession, shall forfeit and pay the sum of twenty pounds, lawful money of this government, for every such offence, or suffer six months imprisonment, without bail or mainprize : one moiety of which forfeiture shall be paid to the informer or prosecutor, and the other moiety to the Overseers of the poor of the township, city or borough, where such offender shall reside, for the use of the poor of the said township, city or borough, if resident within this province, if otherwise, where he shall be apprehended.

Offences  
against this  
act to be tri-  
ed in the  
county next  
adjoining  
where they  
were com-  
mitted.

II. *And be it enacted*, That all and every of the offences, which shall be hereafter committed against the true intent and meaning of this act within either of the said rivers Delaware or Susquehanna, shall be laid to be committed within the said rivers respectively, in the county which shall lie next to or adjoin that part of the said rivers respectively where the offence is committed ; and the Justices of the County Court of Quarter Sessions of the said county, which shall so adjoin the part of the said river where the offence is committed, are hereby authorized, empowered and required, to hear, try, and determine the same, by a jury of the county, in the same manner as other criminal offences, committed within their respective counties, are usually heard, tried, and determined before them.

III. And whereas part of the said river Susquehanna divides the counties of Lancaster, York and Cumberland, and some doubts may arise in which of the said counties the offences committed within the said river, against this act, ought to be tried : For removing whereof, *Be it enacted*, That all and every such offence and offences, which shall be committed within the said river Susquehanna, shall be laid to be committed in any or either of the said counties, joining on that part of the said river where such offence shall be committed, and heard, tried and determined, in the Court of Quarter Sessions of the same county, in manner aforesaid.

IV. And for the more speedy removal of such wears, racks, baskets, fishing-dams, pounds, and other devices aforesaid, as are already or hereafter shall be made in any of the said rivers, *Be it enacted*, That the Justices of the County Court of Quarter Sessions of the several counties within this province, bounded on and adjoining to any of the said rivers, or in which the same are included, at their next Court of Quarter Sessions, after the publication of this act, and as often after as there shall be occasion, and that any Justice or Justices of the Peace, out of term time, shall, and they are hereby enjoined and required, to issue forth their warrants to the Overseers of the highways of each and every township, next adjacent to the wear, rack, fishing-dam, pound, or other device aforesaid, so erected, or in which they, or any of them, shall be erected, enjoining and requiring them the said Overseers respectively forthwith to remove, or cause to be removed, every such wear, rack, basket, fishing-dam, pound, or other device aforesaid; and for that purpose to summon the inhabitants of their respective townships, giving them three days notice, to repair to, throw down, remove and destroy such wear, rack, basket, fishing-dam, pound, or other device aforesaid, so erected, built or set up, in manner aforesaid, and to make return of such their proceedings to the said Justices at their next Court of Quarter Sessions, by whom such warrants shall be respectively issued; and if any such Overseer or Overseers of the highways, to whom such warrant shall be directed, shall refuse, or neglect to discharge and perform the duty thereby enjoined and required of him or them, he or they so offending, and being thereof legally convicted by a jury of the county, or by his or their own confession, before the said Justices, in their said Court of Quarter Sessions, shall, for every such offence, forfeit and pay to the Overseers of the poor of the township where such offender or offenders shall reside, the sum of ten pounds, for the use of the poor of the said township; and if any inhabitant, so summoned, shall refuse or neglect to attend in person, or to send another able person in his room, to assist in throwing down, removing and destroying such wear, rack, fishing-dam, basket, pound, or other device aforesaid, so erected, built or set up, in such manner as the said Overseer or Overseers shall order and direct, he shall forfeit and pay the sum of ten shillings for every such offence, to the Overseers of the poor of the township whose inhabitants are so summoned, for the use of the poor; to be recovered and levied as debts under forty shillings are by law directed to be recovered and levied.

V. And to prevent any delay that may happen, through default of any of the said Justices, the said Overseers of the highways or of any other person or persons whatsoever, *Be it enacted*, That it shall and may be lawful to and for any person or persons whatsoever to break, throw down, remove and destroy, all or any wear or wears, fishing-dams, racks, baskets, pounds, or other device whatsoever, built, set up or laid, or to be built, set up or laid, within any of the aforesaid rivers, for catching of fish as aforesaid: and that every person or persons, who shall assault, hinder or obstruct, any person in pulling down, breaking, removing or destroying, any of the aforesaid devices, in any of the rivers aforesaid, and being

1761.

Justices of the Court of Quarter Sessions to issue their warrants to the Overseers of highways, for removing wears, &c.

Penalty on persons obstructing the removing of wears, &c.



1761. thereof legally convicted before any one of the said Justices of the said Courts, shall forfeit and pay for every such offence five pounds, lawful money as aforesaid; one moiety thereof to the use of the poor as aforesaid, and the other moiety to the person or persons assaulted or obstructed in removing or destroying any of the said devices, to be recovered by a warrant from any of said Justices, as debts of five pounds, or under, are recoverable by the laws of this province.

Constable to inspect, and give information of offences against this act, &c.

VI. And for the more effectual detecting and punishing offenders against this act, *Be it enacted*, That the constable of each respective township, which shall be bounded by or adjoined to any part of any or either of the said rivers, shall, and he is hereby enjoined and required, under the penalty of five pounds, to be recovered and applied in manner last aforesaid, carefully and diligently to inspect and view, once at least in every fourteen days, from the first day of August to the first day of December, in every year, such parts of the said rivers as shall be adjoining his respective township; and having any knowledge of any offences against this act, he shall forthwith give information thereof to some Justice of the Peace, who shall immediately issue his warrant to the Overseers of the highways aforesaid, for the purposes aforesaid; and the said constable shall also present, on oath or affirmation, every such offence to the Justices of the Court of Quarter Sessions of their respective counties, together with the name and names of such offender or offenders, that he or they may be tried according to the directions of this act; which oath or affirmation the said Justices are hereby required duly and carefully to administer.

What relates to wears, &c. already erected in Delaware or Susquehanna, to be of no force, until laws are passed for the same purpose in New Jersey and Maryland.

VII. *Provided always nevertheless, and be it further declared and enacted*, That so much of this act as relates to the wears, racks, baskets, fishing-dams, pounds, and other devices aforesaid, already erected, or hereafter to be erected, in the river Delaware, shall be, and shall be deemed, held, construed and taken, to be of no force, validity or virtue, until a bill for remedying the same mischiefs and inconveniences, hereby intended to be remedied in the said river, shall be passed and enacted into a law by the Legislature of the province of New-Jersey, and be in full force and virtue; and that so much of this act as relates to the wears, racks, baskets, fishing-dams, pounds, and other devices aforesaid, already erected, or hereafter to be erected, in the river Susquehanna, shall be, and shall be deemed, held, construed and taken, to be of no force, validity or virtue, until a bill for remedying the same mischiefs and inconveniences thereby intended to be remedied in the said river, shall be passed and enacted into a law by the Legislature of the province of Maryland, and be in full force and virtue, any thing herein contained to the contrary thereof in any wise notwithstanding.

Passed 14th March, 1761.—Recorded A. vol. IV. page 220. (b)

(b) By chap. 626, the rivers Delaware and Lehigh, and parts of Nesha-minney creek, as far as Barnesly's ford, and the stream called Lechawaxen, as far up as the falls thereof, were declared to be common highways. The same

act appointed Commissioners, with power to lay out a subscription fund for improving the navigation of the Delaware and Lehigh; it prohibited drawing the waters of those rivers from their natural channels, for the use of any mill

or water-work ; it imposed a penalty on any person, who should erect any dam, &c. to impede the navigation, or who should destroy the works erected by the Commissioners ; it declared that offences committed in the rivers against the act, should be tried in the adjoining county ; it tolerated, all previously erected mill-dams in the river Delaware ; and it directed the Commissioners to keep a record of their proceedings, and report the same annually to the Legislature.

By chap. 627, post. the river Susquehanna, as far as Wright's ferry ; the river Juniata, up to Bedford and Frankstown ; the following streams, to wit, Bald-Eagle, as far up as Spring-creek ; Penn's-creek, twenty miles up ; Swatara, as far up as Kettle's mill-dam ; Conestogoe, as far up as Matthias Slough's mill-dam ; Conedogwinet, as far up as the Cove fording, which leads to Forty Shilling Gap ; Machanoy and Kiskiminetas, are all declared to be highways ; Commissioners are appointed to clear the same, and various regulations are established, for preserving the navigation and fisheries thereof. So much of the act in the text, as relates to the obstructions in the river Susquehanna, above Wright's ferry, is also repealed and supplied. But see chapter 1144. [New Commissioners appointed, &c.]

For the act providing for clearing obstructions in the river Susquehanna, down to the Maryland line and joining the river Delaware and Chesapeake bay by a canal, see chap. 2175.

By an act the 25th September, 1786, (chap. 1234,) provision is made for distributing and annexing the State jurisdiction upon the river Delaware, and certain islands therein.

For general laws for improving the navigation of rivers and streams, see chap. 1558, 1634, 1683, and the title *Roads and Rivers*, in the index to this edition. (*Note to former edition.*)

All such parts of this act as relates to the rivers *Delaware* and *Lehigh*, are repealed by an act passed March 9th, 1771, (post. chap. 638)

March 30th, 1784, (chap. 1081,) a

new act was passed to regulate the fisheries in the river Delaware and Lehigh, and for the preservation of the fish in the said rivers.

By a supplement passed April 7th, 1786, the second section was rescinded, so far as it relates to the Delaware below the head of the falls of Trenton, and the sixth section was entirely repealed, and some further regulations with respect to the fisheries were introduced, (chap. 1211.)

February 8th, 1804, (chap. 2414,) "an act to regulate the fisheries in the river Delaware and its branches, and for other purposes," was passed, which repeals all former laws and parts of laws on the same subject, thereby altered ; but the river Schuylkill is excepted from the regulations thereof—and the operation of the act is suspended, until a similar law should be passed in the state of *New Jersey*.

Such act was passed in the state of New Jersey, with certain amendments and additions, which were adopted by the state of Pennsylvania by an act passed February 23d, 1809, which repeals such parts of the act of 1804, as is thereby altered, and all other parts of the said act of 1804 are declared to be in full force and effect.

(To this act is annexed the act of New Jersey.)

The state of New Jersey passed a supplement to their act, in November, 1809, which was ratified and confirmed by Pennsylvania, by act of March 19th, 1810, to which latter act, the supplement of New Jersey is also annexed.

With respect to the Susquehanna, April 8th, 1799, (chap. 2052), an act was passed to prevent the erection of fish dams and baskets, in the rivers Schuylkill, Susquehanna and Juniata, and the branches thereof. And, another act was passed March 16th, 1807, (chap. 2773,) "to regulate the fisheries in the river Susquehanna and its branches.

See title *Conestogoe*, in the general index to this edition—and the general act, authorizing mill dams on navigable streams, passed March 23d, 1803, (chap. 2342.)

## CHAPTER CCCCLXV.

*An ACT for making the river Schuylkill navigable, and for the preservation of the fish in the said river.*

WHEREAS the river Schuylkill is navigable for rafts, boats, and other small craft, in times of high freshes only, occasioned by



1761.

the obstruction of rocks, and bars of sand and gravel, in divers parts of the same : And whereas the improving the navigation of the said river, so as to make it passable at all times, will be very advantageous to the poor, greatly conducive to the promotion of industry, and beneficial to the inhabitants residing on or near said river, by enabling them to bring the produce of the country to the market of the city of Philadelphia, and thereby encrease the trade and commerce of the province : And whereas divers of the inhabitants of this province, desirous to promote the welfare of the public, have subscribed large sums of money for the purposes aforesaid, and, by petition to the Assembly, have requested that commissioners may be appointed by law to take, receive and collect the said subscriptions, and such others as shall hereafter be given or subscribed, and to apply and appropriate the same for and towards the clearing, scouring and rendering the said river navigable, as aforesaid : *Be it therefore enacted*, That Joseph Fox, John Hughes, Samuel Rhoads, John Potts, William Palmer, David Davis, Mordecai Moore, Henry Pawling, James Coultas, Jonathan Coates, Joseph Millard, William Bird, Francis Parvin, Benjamin Lightfoot, and Isaac Levan, or a majority of them, shall be, and are hereby, constituted and appointed commissioners for clearing, scouring and making the said river Schuylkill navigable ; who, or a majority of them, as aforesaid, shall have full power and authority, by virtue hereof, to take, collect, recover and receive, of and from any person or persons whatsoever, any sum or sums of money, which are or shall hereafter be given, granted or subscribed, for and towards making the said river Schuylkill navigable ; and the monies so collected, recovered and received by them, to lay out, appropriate and employ, for and towards making the said river navigable, and passable for boats, flats, rafts, canoes, and other small vessels, from the ridge of mountains, commonly called the Blue Mountains, to the river Delaware.

Commissioners appointed for clearing the river, &c. see chap. 650, sect. 3.

Commissioners to have full power to enlarge, straighten, or deepen the said river, &c.

II. *And be it further enacted*, That the said commissioners, or the major part of them, shall have full power and authority, by themselves, their agents, servants, hirelings and workmen, to clear, scour, open, enlarge, straiten or deepen the said river, in any part, place or places thereof, which shall appear to them most convenient for opening, making anew, or improving the channel, and also to cut, blow up, remove, or take away all trees, rocks, beds of gravel, sand or mud, wears, fishing-dams, baskets, pounds, stones, or any other impediment or obstruction whatsoever, which may or can in any manner hinder, impede or obstruct the navigation of the said river ; and to form, make, erect, and set up in the said river any dams, pennis for water-locks, or any other works whatsoever, which they shall think most fit and convenient to answer the purpose aforesaid, and to alter, repair or amend the same, as often as it shall be necessary or convenient ; and also to appoint, set out and make towing-paths, or ways for towing, hauling or drawing of boats, vessels, or other small craft, and rafts of any kind whatsoever, in, upon or through the said river ; which said paths shall be free and open to all persons whatsoever, having occasion to use the same ; and from time to time, and at all times hereafter, to do, execute and perform all and every other matter and thing in the said river, necessary or



convenient for making, maintaining, supporting and continuing the navigation thereof. 1751.

III. *And be it enacted*, That if any person or persons whatsoever, from and after the publication of this act, shall erect, build, set up, repair or maintain, or shall be aiding, assisting or abetting, in erecting, building, setting up, repairing or maintaining any wear, rack, basket, fishing-dam, pound, or other device or obstruction whatsoever, within the said river, or that shall fix or fasten any net or nets across the same, or any part thereof, whereby the fish may be obstructed from going up the said river, or that shall take, destroy or spoil any spawn, fry or brood of fish, or any kind of fish whatsoever, in any such wear, rack, dam, basket, pound or other device aforesaid, every such person so offending, being thereof legally convicted, by the oath or affirmation of one or more credible witnesses, or by his own confession, shall forfeit and pay the sum of twenty pounds, lawful money of this government, for every such offence, or suffer six months imprisonment, without bail or mainprize: one moiety of which forfeiture shall be paid to the informer or prosecutor, and the other moiety to the Overseers of the poor of the township where such offender shall reside, for the use of the poor of the said township.

Penalty on setting up or repairing wears, &c.

IV. And for the more speedy removal of such wears, racks, baskets, fishing-dams, pounds, and other devices and obstructions aforesaid, as are already or hereafter shall be made in any part of the said river, *Be it enacted*, That the Justices of the County Court of Quarter Sessions of the several counties within this province, bounded on and adjoining to any part of the said river, at their next Court of Quarter Sessions after the publication of this act, and as often after as there shall be occasion, and that any of the said Justices, of the Peace out of Sessions, shall, and they are hereby enjoined and required to issue forth their warrants to the Overseers of the highways of each and every township next adjacent to the wear, rack, fishing-dam, basket, pound, or other device or obstruction aforesaid, so erected, enjoining and requiring them, the said Overseers respectively, forthwith to remove, or cause to be removed, every such wear, rack, basket, fishing-dam, pound, or other device or obstruction aforesaid; and for that purpose to summon the inhabitants of their respective townships, giving them three days notice, to repair to, throw down, remove and destroy such wear, rack, basket, fishing-dam, pound, or other device or obstruction aforesaid, so erected, built or set up, and to make return of such their proceedings to the said Justices, at their next Court of Quarter Sessions, by whom such warrants shall be respectively issued. And if any such Overseer or Overseers of the highways, to whom such warrant shall be directed, shall refuse or neglect to discharge and perform the duty thereby enjoined and required of him or them, he or they so offending, and being thereof legally convicted by a jury of the county, or by his or their own confession before the said Justices, in their said Court of Quarter Sessions, shall, for every such offence, forfeit and pay to the Overseers of the poor of the township, where such offender or offenders shall reside, the sum of ten pounds, for the use of the poor of the said township. And if any inhabitant so

Justices of the Quarter Sessions to issue their warrants to the Overseers of highways for removing wears, &c.



1761. summoned shall refuse or neglect to attend in person or to send another able person in his room, to assist in throwing down, removing and destroying such wear, rack, fishing-dam, basket, pound, or other device or obstruction aforesaid, so erected, built or set up, in such manner as the said Overseer or Overseers shall order and direct, he shall forfeit and pay the sum of ten shillings, for every such offence, to the Overseers of the poor of the township, whose inhabitants are so summoned, for the use of the said poor, to be recovered and levied as debts under forty shillings are by law directed to be recovered and levied.

Penalty on persons obstructing the removing of wears, &c.

V. And to prevent any delay that may happen, through the default of any of the said Justices, Overseers of the highways, or persons so summoned, *Be it enacted*, That it shall and may be lawful to and for any person or persons whatsoever to break, throw down, remove and destroy all or any such wear or wears, fishing-dams, racks, baskets, pounds, or other device or obstruction whatsoever, built, erected, set up, or to be built, erected or set up, within the aforesaid river ; and that every person or persons, who shall assault, hinder or obstruct any person in pulling down, breaking, removing or destroying any of the aforesaid devices or obstructions, in any part of the river aforesaid, and being thereof legally convicted, before any one of the said Justices of the said courts, shall forfeit and pay, for every such offence, five pounds, lawful money as aforesaid ; one moiety thereof to the use of the poor as aforesaid, and the other moiety to the person or persons assaulted or obstructed in removing or destroying any of the aforesaid devices or obstructions, to be recovered by a warrant from any of the said Justices, as debts of five pounds, or under, are recoverable by the laws of this province.

Constable to inspect, and give information of offences against this act, &c.

VI. And for the more effectual detecting and punishing offenders against this act, *Be it enacted*, That the constable of each respective township, which shall be bounded by or adjoined to any part of the said river, shall, and he is hereby enjoined and required, under the penalty of five pounds, to be recovered and applied in manner last aforesaid, carefully and diligently to inspect and view, once at least in every fourteen days, from the first day of August to the first day of December, in every year, such parts of the said river as shall be adjoining to his respective township ; and having any knowledge of any offences against this act, he shall forthwith give information thereof to some Justice of the Peace, who shall immediately issue his warrant to the Overseers of the highways aforesaid, for the purposes aforesaid ; and the said constable shall also present, on oath or affirmation, every such offence to the Justices of the Court of Quarter Sessions of their respective counties, together with the name and names of such offender or offenders, that he or they may be tried according to the directions of this act ; which oath or affirmation the said Justices are hereby required duly and carefully to administer.

VII. And whereas part of the said river Schuylkill divides the counties of Philadelphia and Chester, some doubts have arisen in which of the said counties the offences committed within the said river shall be tried ; for removing of which doubts, *Be it enacted*,

That it shall and may be lawful for the person or persons informing, prosecuting or complaining of any of the aforesaid offences, committed within the said river, to lay the same to be committed within the said river in the county of Philadelphia or Chester, and the same shall be heard, tried and determined in either of the said counties, joining on that part of the river where the offence is committed, at his election.

1761.

Manner of  
prosecuting  
offenders.

VIII. *Provided always nevertheless,* That nothing herein contained shall be held, deemed, taken or construed, to prevent, prohibit or obstruct the said commissioners from making, erecting, or setting up any dams, pennis for water-locks, or other works or devices in the said river, which they shall think necessary to aid, assist or improve the navigation of the same, or by any means whatsoever to lessen, diminish or destroy the powers and authorities herein before given and invested in them, or to compel or oblige, authorize or empower, any Justice or Justices, either in or out of their sessions as aforesaid, or any Overseer or Overseers of the highways, or any other person whatsoever, to pull down, destroy, or amove such parts of the said dams, and other devices aforesaid, as shall be deemed and adjudged by the said commissioners necessary and convenient to promote or improve the navigation aforesaid: but all and every such part of the said dams, and other devices aforesaid, the said Overseers, and all other persons whatsoever, are hereby enjoined and required to suffer the same to remain unmoved, any thing herein before to the contrary in any wise notwithstanding.

Dams, &c.  
erected by  
the Commis-  
sioners for  
improving  
the naviga-  
tion, not to  
be moved,  
&c.

IX. *And be it enacted,* That the said commissioners shall, once in every year, make report of their transactions, in clearing, scouring and rendering navigable the said river, to the Assembly of this province for the time being, and shall lay before them a faithful and just account of all and every sum and sums of money by them had and received for the clearing the said river, and in what manner the same shall be expended and laid out, that the same may be adjusted, settled and allowed.

Commission-  
ers to make  
report year-  
ly to the As-  
sembly.

X. *And be it enacted,* That an act passed in the third year of the reign of King George the second, entitled *An Act to prevent the erecting wears, dams, &c. within the river Schuylkill*,\* and the act passed in the eighth year of the same reign, entitled *An Act the more effectually to prevent the erecting of wears, dams, &c. within the river Schuylkill*,† and all and every article, clause and thing, in the said acts contained, shall be, and is hereby declared to be, repealed, null and void, to all intents and purposes whatsoever.

Former acts  
relative to  
wears, &c.  
repealed.  
\* Chap. 318.

† Chap. 335.

Passed 14th March, 1761.—Recorded A. vol. IV. page 224. (c)

(c) See the note to the preceding act, chap. 463. A supplement was passed to the act in the text, February 26th, 1773, (chap. 680,) appointing new commissioners, and prescribing certain regulations respecting *Bull's mill dam*, at *Barbadoes Island*, (Norristown.)

A further supplement was passed March 24th, 1781, (chap. 919,) and other commissioners appointed, and new regulations prescribed respecting

the fisheries. And see the act to regulate the fishery in the river Schuylkill, passed March 9th, 1771, (chap. 621,) revised, and continued in force, and extended as low down as Province Island, March 14th, 1777. (chap. 736.)

By a supplement passed March 15th, 1784, (chap. 1067,) the act in the text, and the two former supplements, so far as not altered by this act (1067,) are declared to be in force. By this latter



1761. act other commissioners are appointed, and the river divided into districts, for the carrying into effect the former acts. An act to regulate the fishery in the river Schuylkill, was passed March 28th, 1785, (chap. 1135,) and a supplement to this last act, March 9th, 1786, (chap. 1200,) and a further supplement, April 11th, 1793, (chap. 1681,) and, April 8th, 1799, an act passed to prevent the erection of fish dams and baskets in the river Schuylkill, (chap. 2052.)
- See the act for regulating the city of Philadelphia, and preserving the navigation of the river Schuylkill, passed March 25th, 1805, (chap. 2569.)
- For bridges, and other matters relating to the river *Schuylkill*, and its branches, see title *Schuylkill*, in the index to this edition.

## CHAPTER CCCCLXXII.

Amended by  
act of April  
15th, 1782,  
(post. chap.  
969.)

*An ACT to enable the owners and possessors of Schuylkill-point meadow land, in the county of Philadelphia, to keep the banks, dams, sluices and flood-gates in repair, and to raise a fund, to defray the expense thereof.*

Passed 26th September, 1761.—Private Act.—Recorded A. vol. IV. page 243.

[The subject of this act is fully explained in the title.]

# A C T S

OF THE

## General Assembly of Pennsylvania.

Passed at a Session which commenced October 14th, 1761,  
and ended May 14th, 1762.

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JAMES HAMILTON, LIEUTENANT GOVERNOR.

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1762.

### CHAPTER CCCCLXXIII.

*An ACT to enable the owners and occupiers of the Wicacoa meadows, in the county of Philadelphia, to keep the banks, dams, sluices and flood-gates in repair, and to raise a fund to defray the expense thereof.*

Passed 17th February, 1762.—Private act.—Recorded A. vol. IV. page 277.

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### CHAPTER CCCCLXXIV.

*An ACT to enable the owners and possessors of a certain tract of marsh and meadow land, therein described, situate in the counties of Philadelphia, and Chester, to keep the banks, dams, sluices and flood-gates in repair, and to raise a fund to defray the expense thereof.*

Passed 17th February, 1762.—Private act.—Recorded A. vol. IV. page 286.

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### CHAPTER CCCCLXXV.

*An ACT to enable the owners and possessors of the southern district of Darby marsh or meadow ground, in the county of Chester, to embank and drain the same, to make and keep the outside banks and dams in good repair for ever, and to raise a fund to defray the yearly expenses accruing thereon.*

Passed 17th February, 1762.—Private act.—Recorded A. vol. IV. page 296.

[The subject matter of the three foregoing acts, is fully set forth in their respective titles.]



1762.

## CHAPTER CCCLXXVII.

*An ACT for vesting the State-House, and other public buildings, with the lots of ground whereon the same are erected, together with other lots, situate in the city of Philadelphia, in trustees, for the uses therein particularly mentioned.*

**WHEREAS** by the directions of the representatives of the freemen of the province of Pennsylvania, Andrew Hamilton and William Allen, esquires, did purchase, for the use of the said province, divers lots of ground, situate and being on the south side of Chesnut-street, in the city of Philadelphia, lying contiguous to each other, and contained within the bounds following, *to wit*, beginning at a corner on the east side of the Sixth-street from Delaware, and on the south side of Chesnut-street, and extending thence by the said Chesnut-street south, seventy-five degrees east, three hundred and ninety-six feet, to a corner on the west side of the Fifth-street from Delaware; thence by the same south, fifteen degrees west, three hundred thirty-seven feet; thence by other ground north, seventy-five degrees west, one hundred and forty-eight feet and an half, to a line of a lot of ground reputed to be vacant: thence by the same these three several courses and distances next following, *to wit*, north, fifteen degrees east, eighty-two feet; thence north, seventy-five degrees west, ninety-nine feet; thence south, fifteen degrees west, eighty-two feet; thence by other ground north, seventy-five degrees west, one hundred forty-eight feet and an half, to the east side of Sixth-street aforesaid; thence by the same north, fifteen degrees east, three hundred thirty-seven feet, to the place of beginning: And whereas the said William Allen did also purchase of Anthony Morris, for the use of the said province, one other lot of ground, adjoining to the land herein first mentioned, bounded on the south by Walnut-street, eastward with a lot formerly of John Bird, northward with ground herein before described, and westward with a lot reputed to be vacant, containing in breadth on the said Walnut-street forty-nine and an half feet, and in length or depth two hundred and fifty-five feet: And whereas, since the purchases aforesaid were made as aforesaid, a State-house, and other buildings, have been erected, at the charge of the said province, on part of the ground so purchased: And to the end and intent that the said State-house, buildings, and part of the lots of ground so purchased, might be effectually secured to and for the use of the province, it was declared and enacted, in and by an act of general assembly, passed in the ninth year of the late reign, entitled, *An act for vesting the State-house, and other public buildings, with the lots of land whereon the same are erected, in trustees, for the use of this province*, That the said Andrew Hamilton and William Allen should, and they were thereby required to convey, by some good and sufficient assurance or assurances in the law, unto John Kinsey, Joseph Kirkbride (the younger) Caleb Cowpland, and Thomas Edwards, esquires, the lands, tenements and hereditaments aforesaid, and all and singular the appurtenances thereunto belonging, or in any wise appertaining, to hold to them, and the survivors of them, and to the heirs of the survivor of them, for ever, to the uses, intents and purposes, in the same

act particularly mentioned and specified : And whereas the said Andrew Hamilton, John Kinsey, Caleb Cowpland, and Joseph Kirkbride, junior, are since dead, and the said assurance or assurances have not been as yet executed and perfected, according to the directions of the said act : Now, to the end and intent that the said State-house, buildings and lots of ground, purchased and described as aforesaid (excepting and always foreprizing thereout two certain corner lots herein after described) may be effectually secured to the use of this province, and that the legal estate and inheritance thereof may be vested in trustees, to and for the uses and purposes herein after mentioned and specified, *Be it enacted*, That the said State-house, buildings and lots of ground, purchased as aforesaid, except as before excepted and foreprized, and all the immunities, improvements, advantages, hereditaments and appurtenances, to the same belonging, or in any wise appertaining, and the reversion and reversions, remainder and remainders thereof, and all the estate, right, title, interest, claim and demand whatsoever, of the said Andrew Hamilton in his life-time, and of his heirs at law since his decease, and of the said William Allen, of, in, to and out of the premises, shall, from and after the passing of this act, be settled upon, and vested in, Isaac Norris, Thomas Leech, Joseph Fox, Samuel Rhoads, Joseph Galloway, John Baynton, and Edward Pennington, esquires, and the survivors and survivor of them, and the heirs and assigns of such survivor, for ever, freed and discharged, and absolutely acquitted, exempted and exonerated, of and from and against all and every the uses, intents and purposes, mentioned and contained in the said recited act of Assembly, and of and from all claims and demands of the said heirs of the said Andrew Hamilton, and the said William Allen, and his heirs, and of either or any of them, for ever : But, nevertheless, upon the trusts, and to and for the ends, intents and purposes, and subject to the uses, herein after mentioned, expressed and declared, that is to say, to and for the use of the representatives of the freemen of this province, which now are, and from time to time hereafter shall be, duly elected by the freemen aforesaid, and to and for such other uses, intents and purposes, as they, the said representatives, at any time or times hereafter, in assembly met, shall direct and appoint : *Provided always*, nevertheless, and it is hereby declared to be the true intent and meaning hereof, that no part of the said ground, lying to the southward of the State-house, within the wall, as it is now built, be made use of for erecting any sort of buildings thereon ; but that the same shall be and remain a public green and walk for ever.

[II. And upon this further trust and confidence, and to this further end, intent and purpose, that the said Isaac Norris, Thomas Leech, Joseph Fox, Samuel Rhoads, Joseph Galloway, John Baynton, and Edward Pennington, and the survivors and survivor of them, and the heirs of such survivor, shall, from time to time, and at all times hereafter, permit and suffer such suit and suits, action and actions, to be commenced and prosecuted in his or their name or names, or against him or them, or any of them, and also make, seal, deliver, execute and acknowledge such deed or deeds, conveyance or conveyances, fines, recoveries or assurances in the

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The State-house, buildings, &c vested in trustees.

But so much of this act as creates the trust, is repealed by act of February 28th, 1780, (chap. 867,) and the property vested in the commonwealth for the original uses.

[Repealed, chap. 867.]

Trustees to suffer actions to be commenced, &c.



1762. law, for the lands, tenements and hereditaments, settled and vested in the said trustees as aforesaid, or any part and parcel thereof, to the uses aforesaid to such person or persons, and in such manner and form, and to the uses aforesaid, as the representatives aforesaid, in assembly met, shall, at any time or times hereafter direct and appoint; so always that they, the said Isaac Norris, Thomas Leech, Joseph Fox, Samuel Rhoads, Joseph Galloway, John Baynton, and Edward Pennington, and their heirs, executors and administrators, and every of them, be well and truly indemnified, saved and kept harmless of and from any costs, charges, troubles or molestations whatsoever, which may arise for or by reason of such suits, deeds, conveyances, fines, recoveries or assurances, so to be commenced, prosecuted, made and executed.

III. And whereas two certain lots of ground, situate and lying in the said city of Philadelphia, being parts and parcels of the said lot of ground before described; one of them beginning at a corner on the east side of Sixth-street, and on the south side of Chesnut-street, and extending thence by the said Chesnut-street fifty feet to a corner; thence south fifteen degrees west, seventy-three feet to another corner; thence north seventy-five degrees west, fifty feet to a corner, being on the east side of the said Sixth-street; and from thence along the said street north fifteen degrees east, seventy-three feet, to the place of beginning; and the other of the said lots beginning at a corner on the west side of Fifth-street from Delaware Front-street, and on the south side of Chesnut-street, and extending from thence along the west side of the said Fifth-street, seventy-three feet to a corner, being on the west side of the said Fifth-street; and from thence north seventy-five degrees west, fifty feet to a corner; and from thence north fifteen degrees east, seventy-three feet to the south side of Chesnut-street, and from thence along the south side of the said Chesnut-street fifty feet, to the place of beginning; were purchased by the said Andrew Hamilton in his life-time, with intent that they should be assured and conveyed to the trustees aforesaid, one of them for the use of the county of Philadelphia, and the other of them for the use of the city of Philadelphia aforesaid, for erecting two public buildings for the holding of Courts or Common Halls, for the said county and city respectively; which assurance or conveyance was never made and executed: Now to the end and purpose that the said lots may be effectually secured to the several and respective uses aforesaid, and that the estate and inheritance of the premises may be vested in trustees, for the uses, intents and purposes herein after mentioned and specified, *Be it enacted*, That the said two lots of ground last above described, and all the immunities, improvements, advantages, hereditaments and appurtenances, to the same belonging, or in any wise appertaining, and the reversion and reversions, remainder and remainders thereof, and all the estate, right, title, interest, claim and demand of the said Andrew Hamilton in his life-time, and of his heir or heirs since his death, shall, from and immediately after the passing of this act, be settled upon, and vested in, Isaac Norris, Thomas Leech, Joseph Fox, Samuel Rhoads, Joseph Galloway, John Baynton, and Edward Pennington, esquires, and the survivors and survivor of them, and the heirs of such survivor for ever,

The two  
lots above  
described to  
be vested in  
the trustees,  
&c.

freed, exonerated, and for ever discharged of and from all claims and demands whatsoever of the said heir or heirs at law of the said Andrew Hamilton, in trust, nevertheless, and to and for the ends, intents and purposes, and subject to the uses herein after mentioned, expressed and declared, that is to say, that they, the said Isaac Norris, Thomas Leech, Joseph Fox, Samuel Rhoads, Joseph Galloway, John Baynton, and Edward Pennington, or the survivors and survivor of them, and the heirs and assigns of such survivor, upon payment of the sum of fifty pounds, lawful money of this province, for each of the said lots, to them the said trustees, or the survivors or survivor of them, for the use of the province, shall convey and make over, by some proper conveyance or conveyances, deed or deeds, and assurance or assurances in the law, at the proper costs and charges of the county of Philadelphia, one of the said lots of ground, *to wit*, the lot bounded on Sixth-street aforesaid, to such person or persons, and their heirs, as the Justices of the Court of Quarter Sessions of the said county shall nominate and appoint, to and for the building and erecting a public building thereon, for the holding of Courts or Common Halls for the said county; the other of the said lots, bounded on Fifth-street aforesaid, to the Mayor and Commonalty of the city of Philadelphia, and their successors, for erecting a public building thereon, for the holding of Courts or Common Halls, for the use of the said city, and to no other use or uses, intents or purposes whatsoever; which said buildings shall be made and constructed of the like outward form, structure and dimensions.

IV. Saving and always reserving to all and every person and persons, bodies politic and corporate, his, her and their heirs, successors, executors and administrators (other than the heirs of the said Andrew Hamilton, and the said William Allen, and his heirs, and of the said Isaac Norris, Thomas Leech, Joseph Fox, and their and each of their heirs, under certain deeds of trust, bearing date the sixteenth of September, one thousand seven hundred and sixty-one, made by the said James Hamilton, and William Allen, to them, the said Isaac Norris, Thomas Leech, and Joseph Fox, and their heirs, pursuant to the directions of the Representatives of the people) all such estate, right, title and interest of, in, to and out of the premises, vested in the trustees as aforesaid, as they, every or any of them, had before the passing of this act, or could or might have had or enjoyed, in case this act had not been made or passed.

V. *And be it further enacted*, That this act shall be deemed, adjudged and taken to be a public act, and shall be judicially taken notice of as such by all Judges, Justices and other persons whatsoever, without specially pleading the same.

This act to be deemed a public act.

VI. *And be it enacted*, That the act, entitled *An Act for vesting the State-House, and other public buildings, with the lots of land whereon the same are erected, in trustees for the use of the province*,\* shall be, and is hereby declared to be, repealed, null and void, to all intents and purposes.

\* Chap. 344.

Passed 17th February, 1762.—Recorded A. vol. IV. page 272. (d)

(d) By chap. 482, post. the trustees of the Loan-office were empowered to apply five thousand pounds, to complete the purchase of certain lots for the State-House square.



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By chap. 652, persons convicted of maliciously and voluntarily burning the State-House, &c. were to suffer capital-ly; and breaking into the buildings, with intent to commit a felony, &c. was made highly penal. But see the alterations in the penal code on this subject, ante. chap. 236, pa. 105. (in note.)

By chap. 867, the State-House and other public buildings, islands, &c. heretofore held in trust, were vested in the commonwealth.

For other acts relative to vesting lots adjoining the State-House in the county and city commissioners respectively, for public uses, for building two new

court houses, &c. enlarging the lots, see chap. 1154, 1282.

For an act vesting a part of the public square at the State-House in the American Philosophical Society, see chap. 1136.

[For acts providing for the accommodation of Congress, in the public buildings, see chap. 1679, 1819. Now all obsolete, and chap. 2963, which will expire (conditionally) March 26th, 1811.]

For acts providing for the improvement of the State-House, &c. see chap. 1578, 1891, sect. 1, 7, chap. 1948, 2082, sect. 4. (*Note to former edition.*)

## CHAPTER CCCCLXXVIII.

*An ACT for the more effectual suppressing and preventing of Lotteries.*

**WHEREAS** many mischievous and unlawful games, called lotteries, have been set up in this province, which tend to the manifest corruption of youth, and the ruin and impoverishment of many poor families: And whereas such pernicious practices may not only give opportunities to evil disposed persons to cheat and defraud the honest inhabitants of this province, but prove introductive of vice, idleness and immorality, injurious to trade, commerce and industry, and against the common good, welfare and peace of this province: For remedying whereof, *Be it enacted, adjudged and declared*, That all lotteries whatsoever, whether public or private, are common and public nuisances, and against the common good and welfare of this province.

All lotteries common and public nuisances.

Penalty on persons erecting lotteries, &c. See the act against vice and immorality, post. Chap. 1746.

**II.** *And be it further enacted*, That, from and after the publication of this act, no person or persons whatsoever shall publicly or privately set up, erect, make, exercise, keep open, shew or expose to be played at, drawn at, or thrown at, [any lottery, play, or device,\*] or shall cause or procure the same to be done, either by dice, lots, cards, balls, tickets, or any other numbers or figures, or in any other manner or way whatsoever; and that every person or persons that shall set up, erect, make, exercise, keep open, shew or expose to be played at, drawn, or thrown at, any such lottery, play or device, or that shall cause or procure the same to be done, after the publication of this act, and shall be thereof legally convicted in any Court of Quarter Sessions, within the jurisdiction whereof the said offences shall be committed, or in the Supreme Court, if thereunto removed from any of the inferior Courts within this province, shall forfeit and pay the sum of five hundred pounds, lawful money of Pennsylvania.

\* The words inserted between crôchets are printed in the former edition of the laws, but are not contained in the original roll; being, however, necessary to the sense of the section, they are here preserved. (*Note to former edition.*)

III. *And be it further enacted*, That all and every person and 1762.  
persons whatsoever, that shall buy, sell or expose to sale, or that  
shall advertise, or cause to be advertised, the sale of any ticket or  
tickets, or device whatsoever, in such lotteries, plays or devices, or  
that shall be aiding, assisting, or in any wise concerned in manag-  
ing, conducting, or carrying on such lotteries, plays and devices, by  
whatsoever name the same may be called, and be legally convicted  
thereof in either of the Courts aforesaid, shall forfeit and pay the  
sum of twenty pounds, lawful money of Pennsylvania, for every  
such offence.

And on per-  
sons selling  
lottery  
tickets.

IV. *And be it further enacted*, That all and every person and  
persons whatsoever, that shall, within this province, buy, sell, or ex-  
pose to sale, or shall advertise, or cause to be advertised, the sale of  
any ticket or tickets, or other device whatsoever, in any lottery,  
play or device whatsoever, which shall be hereafter set up, erected,  
made, exercised, kept open, shewn or exposed to be drawn at, play-  
ed at, or thrown at, in or at any place or places out of this province  
(state lotteries, erected and licensed by act of Parliament in Great-  
Britain, only excepted and foreprized\*) and be thereof legally con-  
victed in manner aforesaid, shall forfeit and pay the sum of twenty  
pounds, lawful money of Pennsylvania, for every such offence.

State lotte-  
ries except-  
ed.

[\* This part  
of this sec-  
tion is obvi-  
ously obso-  
lete.]  
Manner of  
applying  
the fines.

[V. *And be it further enacted*, That all the fines, forfeitures and  
penalties, hereby inflicted, shall be paid to the Overseers of the  
poor, for the time being, for the use of the poor of the city, borough  
or township, where any of the said offences shall be committed.]

[VI. *Provided always nevertheless*, That nothing herein contain-  
ed shall be deemed or taken to extend to any lottery, advertised in  
the public newspapers of this province on or before the fourth day  
of February in the year of our Lord one thousand seven hundred  
and sixty-two, nor to the selling or buying of any ticket or tickets  
in such lottery, any thing herein contained to the contrary thereof  
notwithstanding.]

[Obsolete.]

VII. *And be it enacted*, That the clause in an act of Assembly of  
this province, entitled *An Act for regulating pedlars and vendues*,  
&c.\* enacting, that if any person or persons shall presume to take  
upon him or themselves, from and after the publication of said act,  
upon any pretence whatsoever, privately or publicly to set up, exer-  
cise or keep any lottery or lotteries within the province of Pennsyl-  
vania, and be thereof legally convicted, he, she or they, shall forfeit  
one hundred pounds, one moiety thereof to the Governor, the other  
moiety to any person that will sue for the same, is hereby repealed,  
and declared to be null, void, and of no effect.

Clause in an  
act of As-  
sembly for  
regulating  
pedlars and  
vendues re-  
pealed.

\* Chap. 308.

Passed 17th February, 1762.—Recorded A. vol. IV. page 262. (e)

(e) By an act passed January 20th,  
1792, (chap. 1592,) reciting the act in  
the text, and that in latter years, it had  
not been considered to extend to lotte-  
ries set up and established without this  
State; it enacts, "that if any person or  
persons, shall expose or offer to sale, or  
sell, barter or exchange, by public or  
private sale or contract, any ticket or  
tickets, chance or chances, or other evi-

dence of chance or chances, or parts  
or shares of any ticket, chance or evi-  
dence of chance, in any lottery, or other  
device in the nature of a lottery, by  
whatsoever name it may be called, not  
authorized by the laws of this Com-  
monwealth, being thereof convicted in  
any court of competent jurisdiction,  
shall forfeit and pay, for every ticket,  
chance or evidence of chance, or part,



1762. or share thereof, in such lottery, or other device, so offered or sold, bartered or exchanged, the sum of five pounds, one moiety thereof to him, her or them, who shall prosecute the offender or offenders, and the other moiety to the Overseers of the poor of the city, town or place, where the offence shall be committed, for the use of the poor thereof, to be recovered as fines, penalties or forfeitures for misdemeanors, are recoverable in such courts.

## CHAPTER CCCCLXXXI.

*An ACT for erecting the southern suburbs of the city of Philadelphia, into the district of Southwark, for making the streets and roads, already laid out therein, public roads and highways, and for regulating such other streets and roads, as the inhabitants thereof may hereafter lay out, and for other uses and purposes therein mentioned.*

Name of the district.

**WHEREAS** there is a certain tract of land adjoining to and bounded by the southernmost bounds of the city of Philadelphia, beginning at South-street, in the said city, and running thence along the several courses of the road commonly called the Passyunk road, including the same, two hundred and ninety-six perches to a corner ; thence south forty-five degrees east, to a road called the Moyamensing road ; thence along a lane, known by the name of Keeler's Lane, to Greenwich road ; thence east to the river Delaware ; thence up the several courses of the said river to South-street ; and thence along the south side of the said street to the place of beginning ; on which said tract of land the owners and possessors thereof have built and erected, at a very great expense, a large number of houses, messuages, wharffs, stores, and other buildings, and have continued, by agreements among themselves made, the several streets of the said city, running north and south, through part of the said improved ground, and have also opened, in the same manner, cross streets, running westward from the said river towards the river Schuylkill, with many convenient roads, lanes, and alleys, leading to and from the said streets ; but as the said roads, streets, lanes, and alleys, are not laid out and confirmed by any legal authority, ill-disposed persons have frequently committed nuisances therein, to the great annoyance, impediment, and disturbance of the inhabitants passing through them, on their lawful occasions : For remedy whereof, *Be it enacted*, That the said tract of land, before described, shall be henceforth called **The District of Southwark**, and is hereby declared to be allotted and divided off into one district ; and that all and every of the streets, lanes, alleys and roads, laid out by agreement as aforesaid, shall be, and are hereby declared to be, public streets, roads, alleys and lanes, for ever, to all intents and purposes, as if the same had been public roads and highways laid out according to law, by order of the Governor and Council, or by order of any Court of Quarter Sessions in this province ; and that all and every nuisance or nuisances committed in them, or any of them, shall and may be heard, tried and determined, in the County Court of Quarter Sessions in and for the county of Philadelphia, in the same and as full and ample a manner, as any nuisance com-



mitted in any public highway in the said county may and ought to be heard, tried and determined. 1762.

II. And in order that the said streets, alleys, lanes and roads, and such others as shall be hereafter laid out, may be duly regulated, made, opened, amended and repaired, *Be it enacted*, That it shall and may be lawful for the freeholders and others within the said district, qualified by law to elect Members of Assembly, to meet together on the third Saturday in the month of April, in every year, and, between the hours of ten in the forenoon and four in the afternoon, choose, by tickets in writing, three Surveyors or Regulators of the said streets, lanes and alleys; who, upon application made to them, shall have full power and authority to regulate and lay out the proper gutters, channels and conduits, for the carrying off the waters in the said district, and to enter upon the lands of any person or persons, in order to set out the foundation, and to regulate the walls to be built between party and party within the said district, as to the breadth and thickness thereof; which foundation shall be equally laid upon the lands of the persons between whom such party wall is to be made; and the first builder shall be reimbursed one moiety of the charge of such party wall, or for so much thereof as the next builder shall have occasion to make use of, before he shall in any ways use or break into the said wall; and that the charge or value thereof shall be set by the said Regulators, or any two of them. (f)

Freeholders to meet, and choose regulators of the streets, &c.

III. *And be it further enacted*, That if any person or persons shall begin or lay the foundation of any party wall, before the same be viewed and directed by the said Regulators, or some two of them, every such person, as well employer as master builder, shall forfeit the sum of five pounds, to be paid to the Overseers of the poor in said district, for the use of the poor thereof, being of the said offence first convicted in the County Court of Quarter Sessions of the county of Philadelphia aforesaid: *Provided always, and be it further enacted*, That if either party, between whom such foundation or party wall is to be made, shall find themselves any ways aggrieved by any order or direction of the said Regulators, he or they may appeal to the Justices, at the next Court of Quarter Sessions to be held for the said county, who shall finally adjust and settle the same; the costs of which appeal shall be paid as the said Court shall direct and appoint.

Penalty on laying the foundation of a party wall, before viewed by the Regulators, &c.

IV. *And be it further enacted*, That the said Regulators or Surveyors attending the said service, for their trouble, shall be paid, by the party or parties concerned in erecting such party wall, the sum of six shillings each, and no more.

Regulators reward.

V. And for the preventing of accidents that may happen by fire in the said district, *Be it enacted*, That if any person or persons, within the said district, shall set on fire his or their chimney or chimnies, to cleanse them, or shall suffer the same to be done, or that shall suffer any of them to blaze out at the top, and be thereof le-

Penalty on firing chimnies.

(f) The reimbursement of the cost of the moiety of a party wall is only a personal charge against the builder of the second house, and not a lien upon the house itself. 1 Dallas, 345. (Note to former edition.)



1762. gally convicted before any Justice of the Peace of the county of Philadelphia, such person or persons shall forfeit and pay the sum of twenty shillings to the Overseers of the poor of the said district, for the use of the poor thereof.

No sickly vessel to come nearer than one mile to said district without licence. [see the laws establishing the Health Office.]

VI. *And be it further enacted,* That from and after the publication of this act, no unhealthy or sickly vessel shall come nearer than one mile to the southern bounds of the said district, without bills of health, nor shall presume to bring to shore such vessels, nor to land their passengers or their goods, at any part of the said district, until they shall obtain a licence for their landing from the Governor for the time being, and his Council, or from any two Justices of the Peace for the county of Philadelphia, under the penalty of ten pounds for every passenger so landed, and one hundred pounds for every vessel so brought within a mile of the bounds aforesaid, to be paid by the commander, merchants or owners of the said vessel offending in the premises, being first legally convicted thereof in the County Court of Quarter Sessions for the county of Philadelphia; one half thereof, to be paid to the Governor, for the support of government, the other half to the Overseers of the poor of the said district for the time being, for the use of the poor thereof.

Penalty on persons stopping any of the streets, &c.

VII. *And be it enacted,* That if any person or persons shall presume to stop any of the said streets, lanes, alleys or public roads, heretofore laid out, or hereafter laid out and confirmed as aforesaid, or shall commit any nuisance therein, and shall not remove the same forthwith, every such person or persons so offending, being thereof legally convicted in the said Court, shall forfeit and pay the sum of three pounds to the Supervisors of the streets and highways aforesaid, to be laid out in repairing the same.

Freeholders to meet, and choose Assessors and Supervisors.

VIII. *And be it further enacted,* That the said freeholders and others, qualified as aforesaid, shall, on the same day whereon they are herein before directed to choose Surveyors and Regulators of the streets, lanes and alleys aforesaid, choose, in the same manner three Assessors, and three Supervisors of the public highways within the said district; which said Assessors and Supervisors, when chosen, and returned in writing, under the hands of any two freeholders of the said district, into the office of the clerk of the County Court of Quarter Sessions aforesaid, shall be the Assessors of the said district, and the Supervisors of the streets, lanes, alleys, roads and highways thereof, for the ensuing year; and if any Supervisor, so elected, or otherwise appointed by virtue of this act, shall refuse to take upon himself the said office, for every such offence he shall forfeit and pay the sum of ten pounds, to be applied towards amending and repairing the said streets, lanes, alleys and highways.

Penalty on Supervisors refusing to serve.

Notice to be given of the election of Supervisors.

IX. *And be it further enacted,* That the Overseers of the roads in the said township the first year, and the Supervisors of the streets, lanes, alleys and highways of the said district, for ever afterwards, shall, at least five days before the third Saturday in April, yearly and every year, give public notice in writing, by affixing the same in the most public places in the said district, of the place where the inhabitants and freeholders of the said district shall meet to elect Supervisors for the said district, according to the directions of this act; which place, so appointed for the said election, shall be as near the centre of the said district as conveniently may be.



X. *And be it further enacted*, That it shall and may be lawful 1762.  
for the said Supervisors of the public streets and highways, together with the Assessors of the said district for the time being, to make or lay a rate or assessment, not exceeding three pence in the pound, clear value of the real and personal estates of all and every the freeholders and inhabitants within the said district, to be employed for the amending and repairing the streets, lanes, alleys and highways, within the said district, in such manner as by this act is directed and appointed; *Provided nevertheless*, That the said rate or assessment shall be laid according to the best of their skill and judgment, and as near as may be to the county assessment for other purposes, laid in pursuance of the act, entitled *An Act for laying county rates and levies*, having due regard to every man's estate within the said district, without favour or affection to any person whomsoever.

Supervisors  
and Asses-  
sors to lay a  
tax.

XI. *And be it further enacted*, That if any Supervisor or Supervisors of the public streets and highways, so as aforesaid chosen, shall refuse or neglect to take upon him or themselves the said office, or shall die, or remove out of the said district, for which he or they shall be chosen, or if the freeholders and inhabitants of the district aforesaid shall neglect or refuse to elect or choose Supervisors, as is herein before directed and appointed, then, and in every such case, it shall and may be lawful to and for the Justices of the County Court of Quarter Sessions of the county of Philadelphia, and they are hereby enjoined and required, to appoint another Supervisor or Supervisors, in the room and stead of every such Supervisor or Supervisors so refusing, dying, or removing as aforesaid, or so neglected to be chosen as aforesaid; which said Supervisor or Supervisors, so appointed, shall have the same powers and authorities, and shall be liable to the same penalties, as the Supervisors so appointed and chosen by the said district, in pursuance of the directions of this act; and that each Supervisor shall have and receive, for his trouble in collecting the several sums of money to be raised as aforesaid, six pence in every pound by him collected, and five shillings *per diem* for each day he shall attend in overseeing, employing and attending the workmen upon the public streets and highways within the said district.

Supervisors  
dying, refus-  
ing or neg-  
lecting to  
serve, others  
to be appoin-  
ted by the  
Justices of  
the Court of  
Quarter Ses-  
sions, &c.

XII. *And be it further enacted*, That the said Supervisors, before they proceed to the collecting of the said rate, shall procure the same to be allowed by at least two Justices of the Peace of the said county of Philadelphia; and if any person or persons, so rated or assessed, shall refuse to pay the sum or sums on him or them charged, and shall not enter his or their appeal at the next General Court of Quarter Sessions aforesaid, that then it shall and may be lawful to and for the said Supervisor or Supervisors (having first obtained a warrant under the hand and seal of one Justice of the Peace of the said county, who is hereby empowered and required to grant such warrant) to levy the same on the goods and chattels of the person or persons so refusing; and in case such person shall not, within three days next after such distress made, pay the sum or sums on him or her assessed, together with the charges of such distress, that then the Supervisors, or either of them, may proceed to the sale of the goods distrained, rendering to the owner the

The tax be-  
fore collect-  
ed. to be al-  
lowed, at  
least by two  
Justices of  
the Peace of  
the county,  
&c.



1762. overplus, if any, that shall remain on such sale, reasonable charges being first deducted : *Provided nevertheless*, That if any person or persons shall find him, her or themselves, aggrieved with such rate or assessment, it shall be lawful for the Justices of the Peace aforesaid, at their next General Quarter Sessions, upon the petition of the party, to take such order therein, as to them shall be thought expedient, and the same shall conclude and bind all parties; and the Supervisor and Supervisors, in case of such appeal, shall forbear making distress, until the same be determined in the Quarter Sessions, in the manner herein before directed and appointed.

Supervisors  
to repair the  
streets, &c.

**XIII.** *And be it further enacted*, That the said Supervisors of the public streets and highways of the said district shall, and they are hereby enjoined and required, as often as the said several streets, lanes, alleys and highways, within the said district, shall be out of repair, to hire and employ a sufficient number of labourers to work upon, open, amend, clear and repair the same in the most effectual manner, and purchase wood, and all other materials necessary for that purpose, and to overlook the said labourers, and see that the said streets, lanes, alleys, roads and highways, be effectually opened, cleared, amended and repaired, according to the true intent and meaning of this act.

Penalty on  
persons,  
working on  
the high-  
ways, asking  
or extorting  
money from  
travellers.

**XIV.** *And be it further enacted*, That if any person, working on the highways within the said district, or being with them, shall ask any money, drink, or any other reward whatsoever, or shall, by any contrivance, ways or means whatsoever, extort any money or other thing of or from any person passing or travelling upon the said public roads or highways, he or she shall, for every such offence, pay to the Supervisor or Supervisors of the said district the sum of three shillings, to be recovered by the said Supervisors, respectively in a summary way, before any Justice of the Peace, and applied for and towards repairing the said roads; and in case any Supervisor shall connive at any person's asking and demanding any reward from any traveller as aforesaid, every such Supervisor shall forfeit and pay for each offence the sum of twenty shillings, to be recovered by any person whatsoever in manner aforesaid; one half to the use of the prosecutor, and the other half to and for the service of the said roads.

Penalty on  
Supervisors  
neglect of  
duty.

**XV.** *And be it further enacted*, That all and every Supervisor or Supervisors of the public roads and highways within the said district, who shall be convicted of having refused or neglected to do and perform his or their duty, as directed by this act, not otherwise particularly provided for, shall be fined, and shall pay the sum of five pounds for every such offence, to be applied towards repairing the public roads and highways within the said district.

Justices to  
examine and  
settle super-  
visors ac-  
counts.

**XVI.** *And be it further enacted*, That the Justices of the Peace of the county of Philadelphia, or any three of them, shall and may, at the time and times when new Supervisors of the highways, within the said district, are to be appointed, annually examine and settle the accounts of the said Supervisors going out of their office, and shall have full power to allow such accounts and sums only, as to them shall seem just and reasonable, and to order the then last Supervisors to pay the balances, together with the fines and penalties on themselves respectively, and others which have come into their



hands, or been imposed by virtue of this act, to the Supervisors for the ensuing year; and in case the said Supervisors, on their going out of their respective offices, shall be found to be in advance for monies expended upon the public roads and highways within the said district as aforesaid, then the said Justices may order the succeeding Supervisors to repay and reimburse the former Supervisors, as soon as a sufficient sum of money shall have come into their hands; and in case of disobedience to any such of their orders, the said Justices may and shall, from time to time, grant attachments to compel obedience to the same. 1762.

**XVII.** *And be it further enacted,* That two Overseers of the poor, one Assessor, to join in assessments to be hereafter made towards sinking the sums of money heretofore granted to the King's use, and one inspector, to be returned, and if chosen, to serve at the general election in and for the county of Philadelphia, shall be nominated and elected in and for the said district, in the same manner as they are directed by law to be appointed and chosen in and for the several townships within this province; which said Overseers so nominated, and Assessors and Inspectors so elected, shall have, use and exercise all and every the powers, rights and privileges, and be subject to the same penalties and forfeitures, within their said district respectively, which are lawfully had, used and exercised by the several Overseers, Assessors and Inspectors of the several townships aforesaid, to all intents and purposes, as if they were respectively nominated and chosen Overseers of the poor, Assessors and Inspectors of any of the townships aforesaid, in pursuance of the laws of this province in such cases made and provided.

Two Overseers, one Assessor, and one Inspector, to be nominated, for said district.

**XVIII.** *And be it enacted,* That nothing in a certain act of assembly, passed in the present year of his Majesty's reign, entitled *An act for opening and better amending, and keeping in repair, the public roads and highways within this province,\** shall be deemed, construed or taken to extend to the public roads, streets, lanes or alleys, within the said district, nor to the levying or assessing the inhabitants thereof, for the purposes therein mentioned, nor to any other matter or thing to be done and performed within the same; but the said act, so far as it relates to or respects the said district, and no further, is hereby declared to be repealed, null and void, to all intents and purposes.

\*[Chap. 479, now expired.]

Passed 26th March, 1762.—Recorded A. vol. IV. page 310. (g)

(g) A great part of the act in the text is repealed and supplied, as will be seen by the following summary. But from the importance of the district and its extensive population, though the act contains many provisions merely local, it is thought necessary to retain the whole of it.

April 15th, 1782, (chap. 970,) an act passed to vest certain lots of ground in the District of Southwark, in trustees for the use of a public landing, upon certain conditions, &c.

September 20th, 1782, (chap. 930,) commissioners were appointed to pur-

chase public landings in the District of Southwark, and to raise a fund to pay the purchase money thereof.

September 29th, 1787, (chap. 1310,) commissioners were appointed to regulate the streets, lanes and alleys, in the District of Southwark, and to lay out new streets, lanes and alleys therein, for the accommodation of the inhabitants, and to lay out the roads therein mentioned through the said District, and part of the township of Moyamensing and Passyunk.

By a supplement to the act in the text, passed October 4th, 1788, (chap.



1762. 1365,) wells and pumps are to be established and kept in repair—Penalty for exacting a recompense for water drawn from such pumps—Proceedings in case private pumps are allowed to be out of repair—Punishment for wilfully injuring the pumps—The streets, &c. how to be regulated—How owners of grounds through which sewers shall pass, shall be compensated—The streets to be pitched and paved—owners may pave and pitch the front of their lots—Proceedings directed in case of minors or absentees—Penalty on obstructing any water course or common sewer—Taxes how to be assessed—and limited—Regulators and Supervisors, how to be elected—Qualifications of the Supervisors—Pay of Supervisors and Regulators—Supervisors' accounts, how to be settled—The District to be lighted and watched, &c.—And all parts of the act in the text thereby altered, are repealed.

The District, as described in the text, is incorporated by act of April 18th, 1794, (chap. 1731,) and a supple-

ment, directing the mode of recovering fines imposed by the commissioners, was passed, March 27th, 1795, (chap. 1803.)

The expenses of opening certain roads in the District, how to be defrayed—Act of March 28th, 1796, (chap. 1879.)

A Notary Public to be appointed in the District of Southwark, (chap. 1998.)

An act for the appointment and regulation of Constables in the District of Southwark, was passed March 7th, 1799, (chap. 2013.)

Ordinances of the corporation to be enrolled in the Recorder's office of the county, March 3d, 1800, (chap. 2106.)

Corporation authorized to regulate Sunday markets, March 25th, 1805, (chap. 2568.)

The width of Wharf-street extended, and the wharves within the District, how to be regulated. See the act of April 7th, 1807, (chap. 2826.)

See the titles, *Southwark—Poor-Inspectors*—and *Election Districts*, in the index to this edition.

## CHAPTER CCCCLXXXII.

*An ACT to enable the Trustees of the State-House to purchase certain lots of ground, the remainder of the square whereon the said house now stands. (h)*

**WHEREAS**, in and by an act of Assembly of this province, passed in the first year of his present Majesty's reign, entitled, *An act for appointing certain persons, therein after named, to apply for and receive the distributive shares and proportions which are or shall be allotted to this province, out of the sum and sums of money granted, or to be granted, by Parliament to his Majesty's colonies in America*, it was enacted and provided, that certain sums of money, in the said act mentioned, should be paid and discharged out of the bills of exchange, directed to be drawn by the Trustees of the General Loan-Office by the said act, on John Sargent, George Aufrere, David Barclay, junior, and John Barclay, merchants, in London; and that the said Trustees should, towards sinking the sum and sums of money thenceforth granted to his Majesty's use, and in abatement of the taxes directed to be laid for that purpose, pay and deliver all the remaining part of the money that should arise by the sale of such draughts or bills of exchange, as they, the said trustees, were directed to draw by virtue of the said act, into the hands of the committees of Assembly, who should be yearly appointed to settle the public accounts, in bills of credit of this province, which bills of credit the said committees were thereby enjoined and required to burn, sink and destroy; And whereas, in and by another act of Assembly, passed this present sitting, entitled, *An act for granting to his Majesty the sum of twenty-three thousand five hundred pounds,*

(h) For other acts respecting the State-House, &c. see ante. chap. 477,

pa. 242, and the acts there referred to. (Note to former edition.)



for the purposes therein mentioned,\* the said sum of twenty-three thousand five hundred pounds was thereby directed to be retained by the said trustees, out of the monies so ordered by the said first recited act of Assembly to be burnt, sunk and destroyed; subject, nevertheless, to the draughts and orders, and to the uses, intents and purposes, mentioned and declared in and by the said last recited act of Assembly: And whereas it is thought necessary, for public conveniency, to purchase certain lots of ground, adjoining the ground whereon the State-house is now erected, to and for the same uses, intents and purposes, to which the said House, and its appurtenances are appropriated: *Be it therefore enacted*, That the said Trustees of the Loan-Office, as soon as they shall have sold the said bills of exchange, by virtue of the said act herein before first recited, and received the monies arising thereby, shall, out of the monies so received, and by the said first recited act ordered to be burnt, sunk and destroyed, retain and keep in their hands and possession the sum of five thousand pounds, over and above the said sum of twenty-three thousand five hundred pounds, granted to his Majesty, any thing in the said recited acts of assembly or either of them to the contrary notwithstanding; subject, nevertheless, to the orders and draughts of the Trustees of the State-House, or a majority of them or of the survivors of them, for the time being.

1762.

\* Chap. 493.

Trustees of the Loan-Office to retain in their hands the sum of five thousand pounds, &c.

II. *And be it further enacted*, That the said Trustees of the State-House, or a majority of them, or of the survivors of them, shall apply, order and appoint, the said sum of five thousand pounds, or so much thereof as shall be necessary, for and towards purchasing all or any of the said lots of ground, situate between Chesnut and Walnut-streets, and between the Fifth and Sixth-streets, in the city of Philadelphia, not already purchased for the use of the province; and that the said Trustees, or a majority of them, or of the survivors of them, shall, and they are hereby authorised, empowered and required, after they have contracted and agreed for the said lots, to take and receive, in their names, one or more good and sufficient deed or deeds, conveyance or conveyances, and assurances in the law, for the perfect vesting and securing, the said lots so purchased in them, and the survivors of them, and the heirs and assigns of the survivor of them, as Trustees, for the uses herein after mentioned.

Manner of applying the money, &c.

III. *And be it further enacted*, That the said Trustees, as soon as they shall have purchased the said lots of ground, or any of them, in pursuance of the directions of this act, the same, together with all and singular the immunities, improvements, advantages, hereditaments and appurtenances, and the reversions and remainders, shall be settled upon and vested in the said Trustees, and the survivors of them, and the heirs and assigns of such survivor for ever; but nevertheless, upon the same trust, and to and for the same ends, intents and purposes, and subject to the same uses, to and for which the State-House, with its appurtenances, are, in and by an act of Assembly of this province, passed in this present year of his Majesty's reign, entitled *An act for vesting the State-House, and other public buildings, with the lots of ground whereon the same are erected, together with two other lots, situate in the city of Philadelphia, in* Trustees, for the uses therein particularly mentioned,\* appointed,

The lots to be vested in the Trustees &c.

\* Chap. 477. ante. 242.



1762. limited and declared, and to and for no other uses, intents and purposes whatsoever.

Surplus money, how to be applied.

IV. *And be it enacted*, That if there should happen to be and remain any surplus, more than is sufficient to purchase the said lots of ground, out of the said sum of five thousand pounds, so as aforesaid directed to be retained by the said Trustees of the Loan-Office, all and every part of the said surplus shall be appropriated and applied by them in abatement of the public taxes of this government, and, by the committees of Assembly be accordingly burnt, sunk and destroyed.

Passed 14th May, 1762.—Recorded A. vol. IV. page 336.

# A C T S

OF THE

## General Assembly of Pennsylvania.

Passed at a Session which commenced October 14th, 1762,  
and ended September 30th, 1763.

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JAMES HAMILTON, LIEUTENANT GOVERNOR.

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1763.

### CHAPTER CCCCXC.

*An ACT concerning cattle, horses and sheep, trespassing within this province.*

**WHEREAS** the laws of this province heretofore made to prevent horses, cattle and sheep, from trespassing and breaking into lawful inclosures, have proved ineffectual: For remedy whereof, *Be it enacted*, That if any horse, mare, colt, cattle or sheep, after the publication of this act, shall trespass, by breaking into the inclosure of any person or persons within this province, the same being made according to the act, entitled, *An Act for erecting pounds in each township of this province*, every such person, being injured by such trespass, may seize and distrain such horse, mare, colt, cattle or sheep, and the same, so seized and distrained, may retain, until he shall recover and receive the damages sustained by such trespass, together with the costs of advertising, and reasonable charges for keeping such distress, in manner herein after directed.

Horses, &c.  
trespassing:  
to be dis-  
trained.

**II.** *And be it further enacted*, That every person or persons, making such distress, shall, within the space of forty-eight hours after the same shall be made, give notice thereof to the owner or owners of such horse, mare, colt, cattle or sheep, if he, she or they can be conveniently found; but if not, then such person or persons, seizing or distraining such creature, shall, within three days after such distress taken as aforesaid, cause an advertisement of the marks, brands, stature and colour thereof, and of the place where the same may be found, to be affixed at the most frequented and

Method of  
proceeding  
with the  
horses, &c.  
distrained.



1763. public place of his, her or their township: And if, upon such notice or advertisement, such owner or owners shall appear, but neglect or refuse to make or tender a reasonable satisfaction to the party injured, for the damages sustained by such trespass, and in keeping the said creature, or if the said person or persons, so making such distress, shall not accept the said satisfaction, it shall and may be lawful for either of the parties aforesaid to complain and apply to any Justice of the Peace of the county, where such creature shall be seized and distrained as aforesaid, who shall, upon such complaint and application, issue his warrant, directed to two reputable and honest freeholders of the neighbourhood, commanding and enjoining them forthwith to view the said trespass, and to value, appraise and ascertain the injury and damage done to or within the inclosure aforesaid, having regard to the lawfulness of said fence, with the expense and costs of keeping the said creature, and to make report thereof to him, the said Justice, with all convenient speed; which said valuation and appraisement, and return, they, the said freeholders, are hereby enjoined and required to make accordingly. And if the said valuation and appraisement shall not amount to more than the sum of money tendered to the party injured, as a recompence for the damage done as aforesaid, before such complaint made, then the said Justice shall give judgment for the same only to the party refusing such tender, and award reasonable costs and charges to the other party, for the unjust vexation; but if the said valuation shall amount to more than the sum tendered, or if no such tender be made, then, and in that case, the said Justice shall award and give judgment for the valuation aforesaid to the party injured, with reasonable costs and charges for keeping the said creature so trespassing, against the other party, and shall award execution upon every such judgment, with costs of suit accordingly.

If no owners appear for trespassing creatures, they are to be advertised in the Pennsylvania Gazette, &c.

III. *And be it further enacted,* That if no owner or owners shall appear and make out his or their property in the said creatures, within two weeks after such advertisements shall be published in the townships aforesaid, the person or persons making such distress shall forthwith, under the penalty of five pounds, publish the like advertisement as aforesaid three times in the Pennsylvania Gazette, and shall and may make application, at the expiration of two months after the publication of the same advertisements, to the said Justice of the Peace, who is hereby authorized and required to issue his warrant to two honest and reputable freeholders, and cause them, upon their oath or affirmation, which he is hereby empowered and required to administer to them, to view, value and appraise the creature or creatures so distrained, and to ascertain the damage so done as aforesaid, with reasonable charges for keeping the said creature, and to make return thereof to him as aforesaid; upon which valuation and return, the property of and in the said creatures so valued shall become, and be held and taken to be, and is hereby vested in the person so making such distress; but so nevertheless, that he shall be answerable and accountable to the owner or owners aforesaid for the valuation money aforesaid, at any time afterwards, within the space of one year next after the publication of such advertisements last aforesaid, having first deducted thereout the costs of such pro-

ceedings, advertisements, and charges of keeping the said creature, with the damages so ascertained; but if the said owner or owners shall not appear, and demand the same, within the time limited last aforesaid, then the said person or persons so making such distress shall, upon demand made, pay all such overplus money to the Overseers of the poor of the township where he, she or they shall reside, for the use of the poor thereof, under the penalty of double the sum detained in his, her or their hands, contrary to the direction of this act. 1763.

IV. *And be it further enacted*, That if any such person or persons so distraining shall neglect to give such notice, as herein before is directed, or shall neglect to set up and publish such advertisements in the most public place of his, her or their township, he, she or they shall forfeit and lose all right or title, or pretence of right, to a recovery of any sum or sums of money for such trespass, or any recompence for the same; but shall deliver up the said creature so distrained to the owner or owners thereof, without any recompence, fee or reward whatsoever; and that one half of all the fines imposed by virtue of this act, shall be to the use of the owner or owners of such creature, and the other half thereof to the Overseers of the poor of the said township, for the use of the poor thereof, to be recovered by them, or either of them, in a summary way, as debts not exceeding five pounds are by law directed to be recovered. Forfeiture on persons neglecting to give notice of creatures distrained &c.

V. *And be it further enacted*, That if any person or persons shall, knowingly and wittingly, keep and retain any horse, mare, colt, cattle or sheep, within his, her or their inclosures, for the space of forty-eight hours, without giving the notice, and publishing the advertisements aforesaid, every such person or persons shall forfeit and pay the sum of five pounds for every such offence, to be recovered and applied in manner aforesaid. Penalty on keeping horses, &c. forty-eight hours without advertising them.

Passed 4th March, 1763.—Recorded A. vol. IV. page 407. (i)

(i) See the Notes to chap. 56, ante. pa. 14, and to chap. 158, ante. pa. 71.

## CHAPTER CCCCXCVIII.

*An ACT for erecting a house of correction in the county of Lancaster.*

WHEREAS it hath been represented to this House, by petition from a considerable number of the inhabitants of the borough and county of Lancaster, that they now, and for a long time, have suffered most grievously, as well by unruly disobedient servants, as by idle strolling vagrants from divers parts, who have taken shelter in that county and borough; that drunkenness, profane swearing, breach of the Sabbath, tumults, and other vices, so much prevail, that it is not in the power of the magistrates to suppress them, and preserve peace and good order, having no house of correction for the punishment of such offenders: And whereas the said county and borough of Lancaster have been erected and established since the



1763. passing an act of General Assembly of this province, for erecting houses of correction and work-houses in the respective counties, passed in the fourth year of the reign of King George the first, by means whereof doubts have arisen, concerning the power of the said county to erect houses of correction or work-houses within the said county: For remedy whereof, *Be it enacted*, That it shall and may be lawful for the Commissioners and Assessors of the county of Lancaster, or a majority of them, to meet together, as soon as conveniently may be after the passing of this act, and as often thereafter as need be, and make orders for building, erecting, or causing to be built and erected, or provided, a house of correction in the borough of Lancaster, with convenient yards thereunto adjoining; for doing and performing whereof, all such orders as the Commissioners and Assessors in the said county, or the major part of them, shall from time to time take or set down for erecting the same, shall be of full force, and be duly performed and put in execution.

Commissioners and Assessors to meet, and order the building a house of correction;

which shall be assured to persons appointed by Justices of Quarter Sessions.

Manner of supporting said house.

II. *And be it further enacted*, That when the said house of correction shall be so erected, and fully finished, the same shall be assured unto such persons as the Justices of the Peace, or the major part of them, in their Quarter Sessions of the peace of the said county of Lancaster, shall think fit to order and direct; in trust, nevertheless, to and for the public use of the said county, to be and remain as a house of correction for the said county, to be employed for the correcting, and keeping at hard labour, all rogues, vagabonds, sturdy beggars, and idle and disorderly persons, who, by the laws and usage of Great Britain, or by the laws of this province, are to be kept, corrected, or set to work, in such houses of correction.

III. *And be it further enacted*, That when the house of correction shall be erected and finished in the county of Lancaster, as is herein before directed and appointed, it shall and may be lawful for the Justices of the Peace of the said county, in their Quarter Sessions of the peace, to certify their want of money for supporting the said house of correction, and what sum and sums of money they shall think necessary for the same, to the Commissioners and Assessors of the said county; the said Commissioners and Assessors are hereby required and enjoined, from time to time, to set down and ascertain such sum and sums of money, as they shall judge competent for the purposes aforesaid, and to cause the same to be raised as county rates are usually raised and levied, so that they do not exceed the value of twenty-five pounds yearly.

Keeper, and other officers, to be appointed.

IV. *And be it further enacted*, That it shall and may be lawful to and for the Justices of the Peace of the said county, or the major part of them, in their court of General Quarter Sessions of the peace, or at such other times as shall be necessary, to nominate and appoint some discreet and sober person to be the keeper and manager of the said house of correction, and all other such officers and persons as shall be needful and necessary to be employed in and about the same, and him or them, or any of them, to remove, as they shall see cause; and upon such a removal, or in case of the death of the said keeper, or other officer so to be appointed, to nominate and appoint others in their place and stead, and to settle such reasonable allowances for their services, and for the support of the per-

sons committed to the said house of correction, as the said Justices and Commissioners shall think fit. 1763.

V. *And be it further enacted*, That before any sum or sums of money, or other stock hereafter to be raised, for the purposes aforesaid, shall be paid or delivered into the hands of the keeper or manager of the said house of correction, such keeper or manager shall give good and sufficient security to the Commissioners and Assessors of the said county, to account for and pay to the Commissioners and Assessors, for the time being, the value of the principal sum of money, or other stock to him delivered or paid, for the purposes aforesaid, in case of his death, or removal from being keeper of the said house of correction. Manager to give security.

Passed 4th March, 1763.—Recorded A. vol. IV. page 398. (k)

(k) See chap. 306, ante. pa. 176, and the notes thereto subjoined.



# ACTS

OF THE

## General Assembly of Pennsylvania.

Passed at a Session which commenced October 14th, 1763,  
and ended September 22d, 1764.

1764.

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JOHN PENN, LIEUTENANT GOVERNOR.

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### CHAPTER DX.

*A SUPPLEMENT to the act, entitled An Act for taking lands in execution for payment of debts, and for confirming partitions in several instances heretofore made.*

[This section is retrospective, and obsolete.]

Lands taken in execution by one Sheriff, and sold by his successor, to be valid in law.

WHEREAS some Sheriffs, or other proper officers, who have taken lands, tenements and hereditaments in execution, in pursuance of the act, entitled *An act for taking lands in execution for payment of debts*, have died, or have been removed, before any sale made thereof, or after sale, but before any deeds executed to the purchasers, whereupon, in case of death, sales have been made, or deeds executed by the successor, and, in case of removal, sometimes by the successor, and sometimes by the Sheriff, or other officer, so removed. And whereas sundry lands, tenements and hereditaments, taken in execution by virtue of writs of *fiery facias*, have been sold, and deeds executed for them, without any writs of *venditioni exponas*, by reason whereof doubts have arisen, whether such sales are good and effectual in law, to the great inconvenience of purchasers and debtors: For remedy whereof, *Be it enacted*, That wherever a Sheriff, or other proper officer, who hath heretofore taken in execution any lands, tenements or hereditaments, in pursuance of the said act, hath died, or been removed from his office, by the expiration thereof, before sale made of such lands, tenements or hereditaments, or hath sold the same, but hath died, or been removed as aforesaid, before any deed executed by him to the purchaser, whereupon, in case of removal, sale hath been made, and a deed executed to the purchaser for the premises, either by the Sheriff or other officer so removed, or by his successor, or where the sale hath been made by the Sheriff or officer, so removed or deceased, and

the deed executed by his successor, with or without any writ of *venditioni exponas*, all such deeds and sales made *bona-fide*, for valuable consideration, before the publication of this act, shall be valid in law, and shall convey the same estate to the purchasers that the respective owners had in the premises so sold and conveyed at the time of obtaining the judgment, or of issuing the execution against them, any law, custom or usage to the contrary in any wise notwithstanding.

1764

II. *And be it further enacted*, That whenever any Sheriff, or other proper officer, who shall, pursuant to the said act, hereafter take in execution and sell any lands, tenements or hereditaments, shall die, or be removed, before any deed executed for the same by him to the purchaser, then, and in every such case, the plaintiff or purchaser may apply to the Supreme Court, or to the County Court of Common Pleas, wherein judgment was obtained, and set forth the case to the said Court, with the reason why the title was not perfected by the former Sheriff, or other officer, who sold the same; and thereupon the said Court may, as they shall see cause, and as justice and equity shall require, order and direct the Sheriff, or other proper officer for the time being, to perfect such title, and execute a deed for the same to the purchaser: And upon such order obtained as aforesaid, and entered on the records of the said Court, it shall and may be lawful to and for any Sheriff, or other proper officer, according to the said order and direction, and they are hereby empowered and required, upon the full discharge and payment of the money or price for which the said lands, tenements or hereditaments were sold, with such costs and charges as remain unpaid to the former Sheriff, or other officer, to make, execute, deliver and acknowledge any deed or deeds, and to perform and do all other matters and things, that by the former Sheriff, or other officer, might, could, or ought to have been performed or done in and about the premises, by virtue of the said recited act; which, when done and performed, shall be, and be held and adjudged, as effectual in law, as if the title had been completed by the former Sheriff, or proper officer.

Manner of proceeding, in case of Sheriffs dying, &c. before deeds are executed for sales of lands taken in execution.

III. *And be it further enacted*, That if any Sheriff, or other proper officer, who shall hereafter take in execution any lands, tenements or hereditaments, in pursuance of the said act, shall die, or be removed, before any sale made thereof, then, and in every such case, the like process shall issue to the succeeding Sheriff, or other proper officer, and the same proceedings be had, that might, could, or ought to have issued, or have been had, if such former Sheriff, or other officer, had not died, or been removed; which proceedings shall be, and be held and adjudged, as effectual in law, as if had before the death or removal of the former Sheriff, or officer.

Sheriff dying, &c. before sale made, the like process shall issue to his successor.

IV. And whereas writs of partition have sometimes been executed, and partitions made, by persons who have been Sheriffs, after the expiration of their office, and it hath been doubted, whether such partitions are effectual in law: For removing such doubts, *Be it therefore enacted*, That all partitions that have been made by persons, who have been Sheriffs, after the expiration of their office, and confirmed by the Courts respectively, to which the writs were re-

[Retrospective and obsolete.]

Partitions made by persons who have been Sheriffs, to be good in law.



1764. turnable, where the estates have been quietly held under such partitions, and no action or suit hath hitherto been commenced for reversing or annulling the same, shall be, and be deemed and adjudged, as good and effectual in the law, as if such partitions had been made before expiration of the office of the person so making the same.

[See title  
Partition, in  
the general  
index.]

Former law  
repealed

\*Chap. 299.

V. *And be it further enacted*, That an act of the General Assembly of this province, entitled *A Supplement to the Act for taking lands in execution for the payment of debts*,\* be, and is hereby repealed, and made void.

Passed 23d March, 1764.—Recorded A. vol. V. page 1. (1)

(1) On the subject of this act, see pa. 57, and the notes thereto respectively subjoined. chap. 48, pa. 7, and the act to which this is a supplement, ante. chap. 152,

# A C T S

OF THE

## General Assembly of Pennsylvania.

Passed at a Session which commenced October 14th, 1764,  
and ended September 20th, 1765.

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JOHN PENN, LIEUTENANT GOVERNOR.

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1765.

### CHAPTER DXXIII.

*An ACT for amending each and every of the acts of Assembly of this province heretofore made, for embanking and draining several parcels of marshy land, situate in the counties of Philadelphia and Chester, and for repairing and maintaining the banks, dams and sluices, thereunto belonging.*

Passed 15th February, 1765.—Private act.—Recorded A. vol. V. page 74.

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### CHAPTER DXXV.

*An ACT to enable the owners and possessors of a certain piece of marsh or meadow ground, hereinafter described, situate in Kingessing, in the county of Philadelphia, to embank and drain the same, to make and keep the outside banks and dams in good repair for ever, and to raise a fund to defray the yearly expenses accruing thereon.*

Passed 15th February, 1765.—Private act.—Recorded A. vol. V. page 62.

[The titles of the two preceding acts sufficiently explain their object.]

In the former editions, chap. 518, “A supplement to the insolvent acts,” and chap. 531, “An act to explain and amend the supplement” were printed at large. Vol. 1, folio, pa. 446, 450, vol. 1, 8vo. pa. 409, 413. They are both however superseded, and have become obsolete, or virtually repealed by the act of April 3d, 1794, (chap. 1713,) and the second section of the supplement, (chap. 518,) respecting the remanding of prisoners, and their weekly allowance from creditors, is superseded by chap. 1250, and repealed. And an act passed April 7th, 1807, (chap. 2824,) directs the court to fix the daily allowance, not exceeding fourteen cents, &c.

[See the notes to chap. 315, ante. pa. 189.]



# A C T S

OF THE

## General Assembly of Pennsylvania.

Passed at a Session, which commenced October 14th, 1765,  
and ended September 20th, 1766.

1766.

JOHN PENN, LIEUTENANT GOVERNOR.

### CHAPTER DXXXIII.

*An ACT to prevent cutting or damaging the ropes used by the ferrymen on Schuylkill, or elsewhere, within this province.*

Shallops, &c.  
passing, the  
ropes to be  
sunk, &c.

**WHEREAS** the ropes used by the ferrymen, in drawing their boats over the river Schuylkill, and other rivers and creeks, within this province, greatly tend to the dispatch, ease and security of persons passing over the same: And whereas several evil minded persons, going up and down the said river Schuylkill, have wantonly and maliciously cut the said ropes, to the great obstruction of travellers, and damage of the owners thereof: For prevention therefore of the like mischiefs in future, *Be it enacted*, That if any person or persons, from and after the publication of this act, shall cut any rope, stretched across any of the said rivers or creeks, by the owner or occupier of any ferry, and used in drawing the boats carrying travellers over the same, and shall be thereof legally convicted before any County Court of Quarter Sessions, to be held for the county where the said offence shall be committed, or such offender apprehended, every such person or persons, so offending, shall forfeit and pay the sum of ten pounds; one moiety thereof to the owner or owners of the said rope, and the other moiety thereof to the Overseers of the poor of the city or township where such owner or owners shall reside, to be applied by them to the use of the poor of the said township. And in order to preserve the navigation of the said rivers and creeks as free as conveniently may be, *Be it further enacted*, That if any person or persons shall have occasion to go up or down the said rivers or creeks in shallops, or other larger decked vessels, every such person shall request the owners or occupiers, their fer-

rymen or servants, to slacken and sink the said ropes, in such manner as to enable him or them to pass with his shallop, or other larger decked vessel, in safety; and if the said owners or occupiers, their ferrymen or servants, shall neglect or refuse to slacken and sink the said rope, in manner aforesaid, with all convenient speed, every such owner or occupier, being thereof legally convicted in the said court of Quarter Sessions, shall forfeit and pay the sum of ten pounds; one moiety thereof to the owner or owners of the said vessels so passing up or down the said river or creeks, and the other moiety to the overseers of the poor of the said township, for the use of the poor thereof.

1766.

II. *And be it further enacted*, That all flats or boats passing up and down the said river, if they shall be navigated by sails, shall have their masts to strike or take down occasionally, and the owners thereof, when they come near to the said ropes, shall take down and strike the said masts, and shall, with all other flats and boats, pass under the said ropes, without injuring or damaging the same as aforesaid, unless the said flats shall be so loaded as to require the raising or sinking the said ropes, in which case the said owner or owners of any of the said ropes, his or their servant or servants, shall, on such notice, to be given as aforesaid by the person navigating such loaded flats, raise or sink the said ropes, in such manner as to suffer and enable the said flats to pass by with safety, under the said penalty of ten pounds, to be recovered and applied in manner aforesaid.

Flats or boats, with sails, to have their masts to strike occasionally, &c.

Passed 8th February, 1766.—Recorded A. vol. V. page 113.



# A C T S

OF THE

## General Assembly of Pennsylvania.

Passed at a Session which commenced October 14th, 1766,  
and ended September 26th, 1767.

1767.

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JOHN PENN, LIEUTENANT GOVERNOR.

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### CHAPTER DXLIX.

*An ACT to enable the owners and possessors of the Moyamensing meadows, in the county of Philadelphia, to keep the banks, dams, sluices and flood-gates in repair, and to raise a fund to defray the expenses thereof.*

Passed 21st February, 1767.—Private act.—Recorded A. vol. V. page 173.

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### CHAPTER DLV.

*An ACT to prevent the mischiefs arising from the increase of vagabonds, and other idle and disorderly persons, within this province.*

**WHEREAS** the number of rogues, vagabonds, and other idle and disorderly persons, daily increases in this province, to the great loss and annoyance of the inhabitants thereof: For remedy whereof, *Be it enacted*, That all persons, who shall unlawfully return to such city, township or place, from whence they have been legally removed, by order of two Justices of the Peace, without bringing a certificate from the city, township or place, to which they belong; and all persons, who, not having wherewith to maintain themselves and their families, live idly and without employment, and refuse to work, for the usual and common wages given to other labourers in the like work in the city, township or place, where they then are; and all persons going about from door to door, or placing themselves in streets, highways, or other roads, to beg, or gather alms in

What sort of persons to be deemed idle and disorderly, &c.

the city, township or place, where they dwell, and all other persons wandering abroad and begging; and all persons who shall come from the neighbouring colonies, or any of them, into any township or place within this province, and shall be found loitering or residing therein, and shall follow no labour trade, occupation or business, and have no visible means of subsistence, and can give no reasonable account of themselves, or their business in such township or place, shall be deemed, and are hereby declared to be, idle and disorderly persons, and liable to the penalties hereby imposed; and that it shall and may be lawful for any Justice of the Peace of the county, where such idle and disorderly persons shall be found, to commit such offenders (being thereof legally convicted before him, on his own view, or by the confession of such offenders, or by the oath or affirmation of one or more credible witness or witnesses) to the work-house of the said county, if such there be, otherwise to the common gaol of the county, there to be kept at hard labour, by the keeper of such work-house or gaol, for any time not exceeding one month.

**II.** *And be it further enacted,* That if any persons shall be found offending in any township or place against this act, it shall and may be lawful for any constable of such township or place, and he is hereby enjoined and required, on notice thereof given him by any of the inhabitants thereof, to apprehend and convey, or cause to be conveyed, such person so offending to a Justice of the Peace of the county, who shall examine and try such offenders, and on such confession or proof, shall commit them to the work-house or gaol of the county, there to be kept at hard labour during the term aforesaid: And if any constable, after such notice given as aforesaid, shall refuse or neglect to use his best endeavours to apprehend and convey such offenders before the Justice of the Peace aforesaid, being thereof legally convicted before such Justice of the Peace, every such constable shall forfeit and pay to the Overseers of the poor of the township or place where such offence shall be committed, to the use of the poor thereof, the sum of ten shillings, to be levied by distress and sale of the offender's goods, by warrant from such Justice, and the overplus, if any, after the charge of prosecution and of such distress shall be satisfied, shall be returned to such offender.

Penalty on constables neglecting to apprehend offenders against this act, &c.

**III.** *And be it further enacted,* That any person or persons who shall conceive him, her or themselves aggrieved by any act, judgment or determination of any Justice or Justices of the Peace out of Sessions, in and concerning the execution of this act, may appeal to the next General Quarter Sessions of the city or county, giving reasonable notice thereof, whose order thereupon shall be final.

Persons aggrieved may appeal, &c.

**IV.** *And be it further enacted,* That upon the presentment of any Grand Jury, at any Court of General Quarter Sessions of the Peace in and for any county of this province, that there is no work-house, and that it will be for the benefit and common good of the same county to erect or provide such house, or that the work-house already provided is not sufficient, and requires repairs, or an alteration or enlargement, then, if the Justices of the Peace in their Sessions, shall approve of the same, the Commissioners and Assessors of the county aforesaid, if they unite in judgment with the said Justices and Grand Jury, shall have full power and authority to build, erect, add

Presentment being made to the General Quarter Sessions in any county of the want of a work-house, &c. manner of proceeding thereon.



1767. to, or enlarge, one convenient work-house, and to purchase a lot or lots for the building such house on; and for defraying the expense, charge and costs thereof, shall lay, assess and levy, such further and other rate or rates, assessment or assessments, on all estates, real and personal, within their county, as shall or may be sufficient for the purposes aforesaid, in the same manner, and to be collected in the same manner, by the same persons, and under the same penalties, as is or are enjoined and directed in the laying, assessing, levying and recovering the county rates, by the act of General Assembly of this province; entitled *An act for raising county rates and levies*.

Justices in  
Quarter Ses-  
sions to ap-  
point a keep-  
er of the  
work-house,  
&c.

V. *And be it further enacted*, That the said Justices in their General Quarter Sessions shall, as often as there may be occasion, nominate and appoint some capable, discreet and prudent person, to be the keeper of such work-house, who shall, at the expense of the county, provide, furnish and supply such sufficient implements, materials and furniture, for keeping, setting to work, employing and correcting all idle and disorderly persons, rogues and vagabonds, who shall be legally committed to the said house, as the said Justices and Commissioners shall direct; which said expense, together with such sum of money as shall be allowed the said keeper, for his labour and trouble in his said office, by the Justices and Commissioners aforesaid, shall be paid out of the county stock, and shall be laid, raised, levied, and recovered, in the same manner, as, by the said recited act, other county rates and levies are enjoined and directed to be laid, levied and recovered: and that all materials so found and provided, and worked up in the said house, shall be the property of the county, and shall be sold by such keeper, in such manner as the said Justices and Commissioners shall direct and appoint; and all the proceeds thereof, after deducting the sum or sums expended in the support and victualling such persons so committed, agreeable to the order and directions of the said Justices and Commissioners, if any, shall be paid by such keeper unto the County Treasurer, there to remain liable to the draughts of the County Commissioners aforesaid, for the payment of the county debts: and that two of the said Justices, or any such two of them as shall be appointed at the General Quarter Sessions of the Peace, with one or more of the said Commissioners, shall, four times or oftener, if need be, in every year, visit the said work-house, and examine into the state and management thereof, and report the same to the next General Quarter Sessions aforesaid, to the intent that if any thing be amiss, or not properly conducted, the same may, by order of the said Sessions, and the County Commissioners aforesaid, be reformed and amended.

Nothing in  
this act to  
extend to the  
commitment  
of rogues,  
&c. in the  
city of Phila-  
delphia, &c.

VI. *Provided always nevertheless*, That nothing in this act contained shall be deemed, taken or construed, to extend to the apprehending, trial and commitment of any rogues, vagabonds, or other idle, dissolute and disorderly persons found loitering or residing in the city of Philadelphia, district of Southwark, or townships of Moyamensing and Passyunk, and the Northern Liberties, mentioned in the act, entitled *An act for the better employment, relief and support of the poor, within the city of Philadelphia, the district of Southwark, the townships of Moyamensing and Passyunk, and the North-*

ern Liberties,\* any thing in this act contained to the contrary 1767. thereof in any wise notwithstanding.

Passed 21st February, 1767.—Recorded A. vol. V. page 162. (m)

(m) See the index to titles *Vagrant, Work-house*, and the different acts respecting the *poor*.

\* Chap. 534. now repealed and supplied by an act passed March 29th, 1803, (chap. 2357.)

## CHAPTER DLVI.

An ACT to prevent inconveniences arising from delays of causes, after issue joined.

WHEREAS many great inconveniences have arisen to the inhabitants of this province, by means of delaying the trials of causes between party and party, after issue joined: For remedy whereof, *Be it enacted*, That where any issue is or shall be joined in any action or suit at law, in any of the Courts of this province, and the plaintiff or plaintiffs in any such action or suit hath or have neglected, or shall neglect, to bring such issue on to be tried, according to the course and practice of the said Courts respectively, it shall and may be lawful for the Judges or Justices of the said Courts respectively, at any time after such neglect, upon motion made in open Court, due notice having been given thereof, in open Court, the preceding term, to give the like judgment for the defendant or defendants, in every such action or suit, as in cases of non-suit, unless the said Judges shall, upon just cause, and reasonable terms, allow any further time or times for the trial of such issue; and if the plaintiff or plaintiffs shall neglect to try such issue within the time or times so allowed, then, and in every such case, the said Judges or Justices shall proceed to give such judgment as aforesaid.

When issue is joined, and plaintiffs neglect to bring the same on to be tried, Judges may give judgment. &c.

II. *Provided always, and be it enacted*, That all judgments, given by virtue of this act, shall be of the like force and effect as judgments upon non-suit, and of no other force or effect.

III. *Provided also*, That the defendant or defendants shall, upon such judgment, be awarded his, her or their costs, in any action or suit, where he, she or they, would, upon non-suit, be entitled to the same, and in no other action or suit whatsoever.

Defendants award.

Passed 21st February, 1767.—Recorded A. vol. V. pa. 157. (n)

(n) For a general reference to all the acts respecting the Judiciary Department, see ante. chap. 255; and respecting the penal laws, see ante. chap. 236.

The proviso rule cannot be granted in a suit brought by the commonwealth; but the court will in such case grant a peremptory rule for trial at the next term; and under that direct the jury to be qualified. *Respublica v. Coates*. Supreme Court, July term 1790. 2 Dallas, 109.

A rule to try a cause at the next term, or *non pros*, is not like a rule to

plead or declare; for a trial is a thing that must be in the face of the country. A *non pros* of that kind ought, therefore, to be moved for in court, when the plaintiff may assign reasons for the delay of trial. 1 Dallas, 347.

A rule for trial, or *non pros*, was obtained at the last term; it was continued till this term, a plea added, and particular facts referred, upon which there was a report a few days before the day appointed for trial of the cause.

*By the Court*:—The subsequent plea and reference virtually vacate the previous rule for trial, or *non pros*. The cause



1767. must, therefore, be continued under a new rule. 1 Dallas, 405.

A rule for trial, or *non pros*, was taken in September term, 1787, and notice at bar was entered on the docket. The cause was afterwards continued generally till January term 1789, when the plaintiff moved to put off the trial: But *by the Court*, the rule for tri-

al, or *non pros*, was continued; and as new notice is necessary. 1 Dallas, 410. (*Note to former edition.*) And see the notes and miscellaneous cases of Practice, ante: chap. 255, pa. 150, and the act to regulate arbitrations and proceedings in Courts of Justice, passed March 21st, 1806, (chap. 2686.)

## CHAPTER DLVII.

*A SUPPLEMENT to the act, entitled An Act for the advancement of justice, and more certain administration thereof. (o)*

WHEREAS in and by the act, passed in the fourth year of his Majesty George the first, entitled, *An Act for the advancement of justice, and more certain administration thereof*, it is enacted, that if any person or persons shall be convicted of maliciously and voluntarily burning the dwelling-house, barn, stable or out-house of another, having corn or hay therein, he or they so offending, within this province, shall suffer death; but inasmuch as the said offenders are, under the said act, entitled on prayer to the benefit of clergy, many evil-minded persons have not been deterred by the said provision from the perpetration of the said dangerous and heinous offence: *Be it therefore declared and enacted*, That if any person or persons, from and after the publication of this act, shall maliciously and voluntarily burn the dwelling-house, or any other house, barn or stable, adjoining thereto, or any barn or out-house, having corn or hay therein, although the same shall not be adjoining to such dwelling-house, belonging to any other person or persons, and shall be thereof legally convicted, every such person and persons shall suffer death without benefit of clergy, any thing in the said recited act to the contrary in any wise notwithstanding. (*p*)

Persons convicted of maliciously burning any house, barn, &c. to suffer death, without benefit of clergy.

Persons convicted of counterfeiting gold or silver coin to suffer death, without benefit of clergy.

Penalty on persons tendering counterfeit gold or silver coin in payment, knowing it to be such, &c.

II. *And be it further enacted*, That if any person or persons within this province, after the publication of this act, shall falsely forge and counterfeit any coin of gold or silver, which now is or shall be passing, or in circulation, in this province, every such person or persons, so offending, and being thereof lawfully convicted, shall suffer death without the benefit of clergy; and every person or persons, who shall pay, or tender in payment, any such forged and counterfeited coin of gold or silver, knowing the same to be so forged and counterfeited, and being thereof legally convicted in any court of record in this province, such person or persons shall be sentenced to the pillory for the space of one hour, and to have both his or her ears cut off, and nailed to the pillory, and be publicly whipped, on his or her bare back, with twenty-one lashes, well laid on; and,

(*o*) For the original act, and a general reference to the penal laws, see ante: chap. 236. For the laws relating to the Judiciary department, see ante: chap. 255. (*Note to former edition.*)

(*p*) The punishment of arson, or of being accessory thereto, has been com-

muted into confinement at hard labour, chap. 1766. For the antecedent modifications of the punishment, and a definition of the objects to which arson extends, see ante: chap. 236, sect. 13. (*Note to former edition.*)

moreover, every such offender shall forfeit the sum of one hundred pounds, lawful money of this province, one half to the use of the Governor, and the other half to the discoverer, with costs and charges of prosecution. (q) 1767.

[III. *And be it further enacted*, That if any person or persons, after the publication of this act, shall feloniously take and carry away any horse, mare or gelding, the property of any other person or persons whatsoever, and shall be thereof legally convicted, every such person or persons shall, for the first offence, restore the said horse, mare or gelding, to the owner or owners, or pay him, her or them, the full value thereof, and also shall pay the costs of prosecution, with all such other sums of money as the court shall allow to such owner or owners, for his, her or their loss of time, charges and disbursements, in the apprehending and prosecuting such offender or offenders; and shall also pay to the Governor of this province, for the support of the government thereof, the like value of the horse, mare or gelding, and shall stand in the pillory during the space of one hour, and be publicly whipped, on his, her or their bare backs, with thirty-nine lashes well laid on, and be committed to the work-house or gaol of the city or county, where such offender shall be convicted, for and during any space of time not exceeding six months; and if any person or persons shall be guilty of the like offence a second time, and be thereof lawfully convicted, every such person or persons so offending shall, for every such second and other offence, restore the property so stolen, or pay the value thereof to the owner or owners as aforesaid, and shall pay the costs of prosecution, and such other sums of money as the court shall allow to such owners, for their loss of time and charges as aforesaid; and shall also pay to the Governor of this province, for the support of government, the like value of the horse, mare or gelding, so stolen as aforesaid, and shall be publicly whipped with thirty-nine lashes, on his or her bare back, well laid on, at the public whipping-post, stand in the pillory during the space of one hour, and be committed to the work-house or gaol of the city or county, where such offender shall be convicted, there to be kept at hard labour during any space of time, not exceeding three years.] (r)

Punishment to be inflicted on persons convicted of horse-stealing, &c.

IV. *And be it further enacted*, That every person or persons, who shall receive or buy of any such felon or felons any horse, mare or gelding, knowing the same to be stolen, and being thereof legally convicted, shall, for the first and every other offence, be adjudged to suffer all and every the pains, penalties and forfeitures, which by this act are imposed, and directed to be inflicted upon the principal, for such offences respectively, on his or her conviction as aforesaid.

Penalty on persons receiving stolen horses knowing them to be such.

V. *And be it further enacted*, That so much of the said act of General Assembly of this province, entitled *An Act for the advance-*

(q) The punishment of this offence is changed to confinement at hard labour, (chap. 1766.) (Note to former edition.)

(r) The punishment of this offence is changed to confinement at hard la-

bour, see chap. 1505. See, likewise, chap. 879, where the above section was repealed and supplied. For regulating the sales of horses at public auction, see chap. 908. (Note to former edition.)



1767. *ment of justice, and more certain administration thereof,\* as is*  
 herein and hereby altered and supplied, be, and the same is hereby,  
 \* Chap. 236. repealed, and made null and void.

Passed 21st February, 1767.—Recorded A. vol. V. page 153.

## CHAPTER DLVIII.

*An ACT to appoint certain persons, therein named, Supervisors and Directors of the road and bridge over Hollander's creek, leading to the west district of Greenwich Island, and to enable them to lay such rates and assessments, from time to time, on all lands in the said district, accommodated by the road and bridge aforesaid, as may be found necessary, for supporting, maintaining and keeping the same in good repair.*

Passed 21st February, 1767.—Recorded A. vol. V. page 169.

## CHAPTER DLX.

*An ACT to amend the act, entitled an Act for establishing Courts of Judicature within this province. (s)*

Repeal of  
parts of a  
former law.

Four Judges  
of the Su-  
preme Court  
to be com-  
missionated

[WHEREAS it has been found inconvenient for the Judges of the Supreme Court of this province to ride the circuit, and to try the issues joined in the said Court, in causes removed from the respective counties of Chester and Bucks, on the days and times appointed for that purpose, in and by the act of General Assembly of this province, passed in the eighth year of his Majesty George the first, entitled *An Act for establishing Courts of Judicature within this province*, whereby a practice has been introduced of trying all issues in fact, joined in causes which have been removed from the several counties thereof into the said court, at the city of Philadelphia, which has often obliged the parties, jurymen and witnesses, to attend from the most remote parts of the province at the said city, to their very great, and unnecessary expense and grievance: For remedy whereof, we the Representatives of the freemen of the province of Pennsylvania, do pray that it may be enacted, *And be it enacted*, That so much of the said recited act of General Assembly, as relates to the Governor's appointing and commissionating three Supreme Judges only, and to the nomination and appointment of the days and times for riding to and holding the Circuit and Nisi Prius Courts in the said counties of Chester and Bucks respectively, shall be and is hereby declared to be, repealed, null and void; and that there shall be four persons of known integrity and ability commissioned by the Governor of this province for the time being, by several distinct patents or commissions,

(s) For a general reference to all the acts respecting the Judiciary Department, see ante. chap. 255, and respecting the penal law, see ante. chap. 236. (Note to former edition.)

under the great seal of this province, to be Judges of the Supreme Court, one of whom shall be distinguished in his commission by the name of the Chief Justice; and every of the said Judges shall have all the powers, rights, authorities, jurisdictions and privileges, as are given to the Supreme Judges by the above recited act of assembly; and that the said Judges of the Supreme Court of this province shall, and they are hereby enjoined, if occasion require, to go the circuit twice in every year, into the several counties within this province, on such days and times as they shall nominate and appoint; when and where they, or any one of them, shall try all such issues in fact, as shall be depending in the said Court, and removed out of any of the counties; and generally do, execute and perform, all and every such acts, matters and things, and exercise, use and put in practice all such powers, authorities, jurisdictions and privileges, as are enjoined and required of them, or given and granted unto them, in and by the said recited act of General Assembly. (t)

1767.

by the Governor, who shall have all the powers given by a former law; and shall ride the circuit twice in every year if occasion require.

[II. *And be it enacted*, That the charges and expenses of the Judges and Clerk of the said Supreme Court, with their servants, in their said circuit, shall be paid in manner following; that is to say, all such expenses as shall happen in their circuit through any of the counties, where they shall not hold their said court, shall be paid by the province; and that all such expenses which shall accrue from the time of their coming into, and during their continuance in the county, where they shall hold their said court, by the Treasurer of the same county, out of the county stock. And that they, the said Judges and Clerk, with their servants, shall pass and repass, and shall be conveyed by the ferrymen over all the several ferries within this province, without paying any ferriage, fee or reward for the same.] (u)

Expenses of the Judges how to be paid.

III. *Provided always nevertheless*, That if, after the publication of this act, any plaintiff or defendant in any cause, depending in any County Court of Common Pleas, shall remove any such cause into the Supreme Court aforesaid, the debt or damages whereof, which shall be found due by default, confession, verdict, or report of referees, shall not amount to the sum of fifty pounds, lawful money of this province, every such person, so removing such cause, if a plaintiff, shall not recover any costs of suit, or if a defendant, he shall pay double costs, to be awarded by the said Supreme Court. (x)

No causes to be removed of less value than £.50.

Now see chap. 2634, an act passed March 20th, 1810.

IV. *Provided also, and be it further enacted*, That nothing herein contained shall be deemed, construed or understood, to prevent

(t) Jurisdiction established at the revolution, see chap. 726, and for the existing jurisdiction of the Supreme Court, see the title *Judiciary Department*, in the index to this edition. Of holding Courts of Nisi Prius, &c. see chap. 1564. For the act substituting Circuit Courts for Courts of Nisi Prius, in all the counties except Philadelphia, see chap. 2021. (*Note to former edition.*) [The Circuit Courts are now abolished: See the additional notes to chap. 255.]

rescinded, see chap. 1563. (*Note to former edition.*)

(x) No suit shall be removed from the Common Pleas into the Supreme Court by any writ of *certiorari* issued for the plaintiff, nor by any writ of *habeas corpus* or *certiorari*, after the cause shall have been at issue two terms or more. See chap. 1235, 1252. See, likewise, 1 Dallas, 288, 457. For the act regulating the removal of causes into the Circuit Courts, see chap. 2021. (*Note to former edition.*)

(u) But this provision is virtually



1767. the removing any action of debt for rent, replevin, ejectment, trespass, or any other plaint or suit, wherein the title to lands, or any other real estate, may come in question.

No appeal to be allowed on a general verdict from the Supreme Court to his majesty in council.

[V. *And be it further enacted*, That it shall not be lawful for any person or persons, their heirs, executors, or administrators, to appeal from the final sentence or judgment of the said Supreme Court, awarded in any action or suit wherein a general verdict shall be given, or in any other case, but where there shall be a demurrer to evidence, or bill of exceptions, or where a writ of error may legally be brought, and that upon prayer or petition made or exhibited to the said Court for such appeal, after such general verdict or final sentence or judgment thereon, the said Supreme Court shall enter a disallowance of such appeal, and proceed in the same manner, as if none such had been moved or petitioned for, any thing in the said recited act of General Assembly to the contrary thereof notwithstanding.] (y)

Penalty on jurymen for non-attendance.

[VI. And in order to compel the due attendance of Jurymen on the said Circuit and Nisi Prius Courts, and all other the courts within this province, *Be it enacted*, That if any person shall, after the publication of this act, be duly summoned to attend any court of judicature within this province, to serve on a jury, or on any inquest required by law, and shall neglect or refuse to give his attendance on the day, and during the time his service is necessary, every such person, so offending, shall be fined for every such offence in the Supreme Court, and Court of Oyer and Terminer, by the Judges or Justices thereof, any sum not exceeding three pounds; and for every such offence in the County Court of Common Pleas, or Court of Quarter Sessions of the Peace, for any county or city in this province, by the Judges or Justices thereof, any sum not exceeding forty shillings, unless such delinquent shall, at the same or next succeeding court, render to the Judges or Justices thereof a reasonable excuse for such neglect or refusal, to be allowed by such of them as shall be present, which said Justices are hereby empowered and required, on failure of such delinquent to render such reasonable excuse, to issue a writ to the Sheriff of the county, to levy the said fines on the goods and chattels of every such delinquent, to be paid to the Overseers of the poor of the city, borough or township, where he shall reside, to the use of the poor thereof.] (z)

Passed 20th May, 1767.—Recorded A. vol. V. page 213.

(y) This section has, of course, expired; and a court of Errors and Appeals has been instituted under the authority of the state. See the notes, ante, to chap. 255 (*Note to former edition*) [But that Court is now abolished.]

(z) For the act regulating juries, see chap. 1127, by which this section is virtually repealed: (*Note to former edition.*) [And chap 2577, and an act passed April 4th, 1809.]

## CHAPTER DLXII.

1767.

An ACT to amend the act, entitled *An act to prevent the exportation of bad and unmerchantable staves, heading, boards and timber.* (a)

WHEREAS the act of General Assembly of this province, ante. pa. 222. entitled *An act to prevent the exportation of bad and unmerchantable staves, heading, boards and timber*, has, in sundry respects, been found, on experience, to require further additions and amendments, in order to preserve the credit of those commodities at foreign markets: *Be it therefore enacted*, That no merchant, or other person or persons whatsoever, shall, from and after the publication of this act, lade or put on board any ship or vessel any staves, heading, boards, plank or timber, for exportation out of this province, before he, she or they, shall first submit the same to the examination of the officer, or one of his deputies, appointed, or to be appointed, in pursuance of the direction of the said recited act, for culling of staves and heading, and that at, or as near as conveniently may be to, the time of such lading or putting the same on board, provided such examination be had and made within forty-eight hours before the actual lading and shipping thereof. And if any merchant or merchants, or any other person or persons whatsoever, shall offend in the premises, he, she or they, shall be liable to the same pains, penalties and forfeitures, as are directed to be imposed for shipping of unmerchantable staves and heading by the said recited act.

No staves, &c. to be shipped before submitted to the examination of the officer;

within forty-eight hours before lading.

II. *And be it further enacted*, That if any exporter of staves or heading shall, after the same have been culled, and by the said officer, or his deputy, adjudged merchantable, willingly or wittingly mix any cullings or unmerchantable staves or heading therewith, or suffer the same to be done, every such offender or offenders shall forfeit and pay, for every culling or unmerchantable stave or heading so mixed, as aforesaid, the sum of three pence.

Penalty on mixing cullings with merchantable staves, &c.

III. *And be it further enacted*, That all and every such deputy or deputies shall, within six hours after he or they shall have culled and counted any quantity of staves or heading, make return to his or their principal aforesaid, a true and exact account of his or their transactions therein, under the penalty of one shilling for every hour he shall neglect or refuse so to do, in order that such transactions may be regularly entered in the book, directed by the before recited law to be kept by the principal officer aforesaid.

Deputies to make return to their principal.

IV. *And be it further enacted*, That the penalties and forfeitures imposed by this act shall be recovered, applied and appropriated, in the same manner as the penalties and forfeitures, inflicted by the said recited act, are directed to be recovered, applied and appropriated.

Penalties how to be recovered.

V. *And be it further enacted*, That the act of General Assembly of this province, passed in the first year of the reign of his present majesty, entitled *A Supplement to an act, entitled An Act to prevent the exportation of bad and unmerchantable staves, heading, boards and timber*,\* be, and is hereby repealed, and declared, null and void.

Repeal of a former law.

\* Chap. 452.

Passed 20th May, 1767.—Recorded A. vol. V. page 200.

(a) For the original act, and a general reference to the laws on the same subject, see ante. chap. 439. (Note to former edition.)



# ACTS

OF THE

## General Assembly of Pennsylvania,

Passed at a Session which commenced October 14th, 1767,  
and ended February 20th, 1768.

1768.

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JOHN PENN, LIEUTENANT GOVERNOR.

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### CHAPTER DLXXV.

*An ACT for raising, by way of lottery, the sum of five thousand two hundred and fifty pounds, for purchasing a public landing in the Northern-Liberties, and paving the streets of the city of Philadelphia. (b)*

[Note.—The parts of this act which relate to the lottery are omitted.]

Manner of  
applying the  
money raised  
by the lottery.

*AND be it further enacted,* That after the payment of the sums due to the fortunate adventurers in the said lottery, and defraying the costs and expenses attending the same, the neat sum of money, remaining in the hands of the treasurer aforesaid, shall be applied in the manner following; that is to say, two thousand pounds thereof, for and towards purchasing a landing in the Northern-Liberties, nearly opposite the barracks, and improving the same, with the landing at the end of Callowhill-street, as hereinafter is directed; and the remainder to be paid to the City Commissioners, for pitching and paving the streets, lanes and alleys, of the city of Philadelphia, or to their Treasurer, the better to enable them so to pitch, pave and keep clean the streets, lanes and alleys aforesaid.

Commissioners, &c. of the county of Philadelphia to purchase a landing, &c.

*II. And be it further enacted,* That the commissioners of the county of Philadelphia, in trust for the public, by and with the consent and approbation of the Justices of the Peace of the said county, in their Court of Quarter Sessions, shall, and they are hereby required and enjoined to buy a landing, nearly opposite the said barracks, and receive the deeds thereof, in trust for the public; and

(b) For acts respecting the Northern-Liberties, see post. chap. 624; and for acts respecting Callow-Hill market, see chap. 1015, 1159, 1387. (Note to former edition.)

further to build, or cause to be built thereon, a good wharf, and a pier, for the use of the public. 1768.

III. And the said County Commissioners for the time being, or a majority of them, with the approbation of any three Justices of the Peace for said county, are hereby enjoined and required, for ever hereafter, to have the care, direction and management of the said landing, in letting the same out to any person or persons, for the purposes of repairing and improving the same from time to time, for ever hereafter, as the said Commissioners and Justices, or a majority of them for the time being, may judge most for the public good. And to lett  
the same,  
&c.

IV. And whereas the Honourable the Proprietaries of the province of Pennsylvania have continued Callowhill-street, in the Northern-Liberties aforesaid, into the river Delaware, and as a public landing place at the end of the same street may hereafter prove very advantageous and beneficial to the public, *Be it therefore further enacted*, That the said County Commissioners, or a majority of them, with the consent and approbation of any three Justices of the Peace of the county aforesaid, shall for ever hereafter have the same power and authority, for the improving and letting the same landing place at the end of Callowhill-street aforesaid, for the uses and purposes aforesaid, as to them are hereby given and granted with respect to the landing place, nearly opposite to the said barracks, hereby intended to be purchased. Commission-  
ers, &c. em-  
powered to  
improve the  
landing at  
the end of  
Callowhill-  
street.

Passed 20th February, 1768.—Recorded A. vol. V. page 231.

## CHAPTER DLXXVI.

*An ACT for incorporating the society, known by the name and style of The Philadelphia Contributionship, for the insuring of houses from loss by fire, to ratify and confirm the articles of agreement of the contributors, and to enable them to make suitable bye-laws, for the better management and prosecution of their said design.*

[THE society is incorporated by the name in the title. 2. All debts due to the society, to be sued for in their corporate name. 3. Powers and duties of the directors prescribed. 4. General meeting of the contributors to be held yearly on the second Monday in April, or oftener, if the directors, or a majority of them think fit, or if twenty contributors, insuring to the value of £.10,000, shall require it, fifteen days public notice to be given, &c. 5. Twelve directors and a treasurer to be chosen yearly, by the contributors, at the April meeting, and the mode of election prescribed. 6. The duties of the treasurer prescribed, to give security, which the directors are enjoined and required to see duly given, or in default thereof to be accountable for his conduct and demeanor in office. 7. The directors to meet as often as they think proper, but at least once a month, on the first Tuesday in each month, and the proceedings of a majority to be valid; but if a director or the treasurer should die, remove out of the province, or refuse or neglect to act, or for two calendar months wholly omit to attend to the business of



1768.

the society, the directors, or a majority, may choose another in his room; all the directors acting to have due previous notice of such intended election; and such choice being confirmed by a second meeting of said directors, the person so elected shall be director, or treasurer, until the next annual election. 8. Directors empowered to lend money on mortgage, &c. 9. The directors to be indemnified by the contributors for signing policies, and all lawful acts; and the joint stock, in the first instance, to be appropriated to that purpose; and no director to be answerable for the defaults, neglects, or misdeeds of the others of them.]

Passed 20th February, 1768.—Private Act.—Recorded A. vol. V. page 238.

## CHAPTER DLXXVII.

*An ACT to enable the owners and possessors of a certain tract of marsh and meadow land, therein described, situate in the county of Chester, to keep the banks, dams, sluices and flood-gates in repair, and to raise a fund to defray the expenses thereof.*

Passed 20th February, 1768.—Private Act.—Recorded A. vol. V. page 243.

## CHAPTER DLXXVIII.

*An ACT for regulating the fishery in the river Brandywine.*

**WHEREAS** it hath been represented to the Assembly, by petition from a number of the freeholders of the county of Chester, that live on or near the river called Brandywine, that their ancestors, themselves, and the poor adjacent inhabitants, have formerly enjoyed great advantages from the fishery in the same river; and although no person owning lands below the fork or main branches can claim any right, by survey, to the lands covered with the waters thereof, yet divers persons have erected dams across the said river, to the almost total obstruction of the fish running up the same: Wherefore, for remedying the mischiefs aforesaid, *Be it enacted*, That all and every person and persons whatsoever, having already erected, or that shall hereafter erect, any mill-dam, or other obstruction, across the said river, below the forks thereof, within this province, shall make, open and leave, the space of nine feet in breadth, near the middle of the said dam, at least fourteen inches lower than any other part thereof, so that there be at least twelve inches depth of water during the months of March, April and May, in every year, constantly running through the same; and for every foot that the dam is or shall be raised perpendicular from the bottom of the said river, there shall be laid a platform, either of stone or timber, or of both, with proper walls on each side, to confine the waters, which shall extend at least four feet down the stream, and of the breadth aforesaid, to form a slope for the waters gradual descent; and that all and every person and persons, who shall refuse or neglect to make or alter his, her or their dams, in the manner directed

Manner of  
erecting  
mill-dams  
below the  
forks, &c.

as aforesaid, within the term of one year, next after this act shall be in force, every such person so offending, contrary to the true intent and meaning of this act, being legally convicted thereof, by the oath or affirmation of one or more witnesses, or by his or her own confession, shall forfeit and pay the sum of one hundred pounds, lawful money of this government, for every such offence, or suffer nine months imprisonment, without bail or main-prize; one moiety of which forfeiture shall be paid to the informer or prosecutor, and the other moiety to the Overseers of the poor of the township, city or borough, where such offender shall reside, for the use of the poor of the said township, city or borough, if resident within this province, if otherwise, where they shall be apprehended. 1768.

II. *And be it further enacted*, That if any person or persons whatsoever, from and after this act shall be in force, shall erect, build, set up, repair or maintain, or shall be aiding, assisting or abetting, in erecting, building, setting up, repairing or maintaining, any wear, rack, basket, fishing-dam, pound or other device or obstruction whatsoever, within the said river of Brandywine, below the forks thereof (mill-dams made with the opening in the manner aforesaid only excepted) or that shall fix or fasten any net or nets across the same, or any part thereof, whereby the fish may be obstructed from going up the same; or that shall take, destroy or spoil any spawn, fry or brood of fish of any kind whatsoever, in any such wear, rack, basket, pound or other device aforesaid, every such person so offending, being thereof legally convicted in manner aforesaid, shall forfeit and pay the sum of fifty pounds, lawful money of this government, for every such offence, or suffer six months imprisonment, without bail or main-prize; one moiety of which forfeitures shall be paid to the informer, or person who shall prosecute for the same, the other moiety to the use of the poor of the township where such offender shall reside. Penalty on erecting wears, &c.

III. *And for the more effectual detecting and punishing offenders against this act*, *Be it enacted*, That the Constables of each respective township, which shall be bounded by or adjoining to any part of the said river, shall, and they are hereby enjoined and required, under the penalty of five pounds, to be recovered as debts not exceeding five pounds are directed by law to be recovered, and to be applied in the manner last aforesaid, carefully and diligently to inspect and view, once at least in every two weeks, from the first of March to the last of May, in every year after this act shall be in force, such parts of the said river as shall be adjoining to his respective township; and having any knowledge of any offence against this act, he shall forthwith give information to the next Justice of the Peace, who shall call such offender before him by warrant or summons, and if, on hearing, he shall appear to be guilty of any offence against this act, the said Justice shall take his recognizance, with one sufficient surety, for his appearance at the next Court of General Quarter Sessions of the Peace, to be held for the said county. Constables to inspect and give information of offences against this act, &c.

IV. *And be it further enacted*, That after the mill-dams shall be altered and built agreeable to the true intent and meaning of this act, no person or persons whatsoever shall cast or draw any net or seine, in the said river, within twenty perches next below or above Mill-dams being made agreeable to this act, no person to draw a seine



1768.

within  
twenty  
perches,  
&c.

the said opening, hereby directed to be left in the said dams, under the penalty of fifty pounds, to be recovered and applied in the manner first aforesaid. *Provided always nevertheless,* That nothing in this act contained shall be construed or understood to deprive or hinder any person from drawing a seine or net for the taking of fish in any part of the said river, except near the dams as aforesaid.

What re-  
lates to re-  
gulating the  
fishery in  
the river  
Brandywine  
to be of no  
force, until,  
&c.

*V. Provided also, and be it further enacted,* That the several and respective provisions, matters and things, herein before made, enumerated and expressed, for regulating the fishery in the river Brandywine, shall be, and shall be deemed, held, construed and taken to be, of no force, validity or effect, until a bill for remedying the same mischiefs and inconveniences, hereby intended to be remedied in the said river, shall be passed and enacted into a law by the legislature of the three lower counties of New-Castle, Kent and Sussex, upon Delaware, and be in full force and virtue, any thing herein contained to the contrary thereof notwithstanding.

Passed 20th February, 1768.—Recorded A. vol. V. page 229.

# A C T S

OF THE

## General Assembly of Pennsylvania.

Passed at a Session which commenced October 14th, 1768,  
and ended September 30th, 1769.

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JOHN PENN, LIEUTENANT GOVERNOR.

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1769.

### CHAPTER DLXXXIV.

*An ACT to enable the owners and possessors of the Wicacoa and Moyamensing meadows to erect a dam across Hollander's-creek, near its junction with Hay-creek, and for other purposes therein mentioned.*

Passed 18th February, 1769.—Recorded A. vol. V. page 319.

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### CHAPTER DLXXXV.

*An ACT to enable the owners and possessors of a certain tract of marsh and meadow land, therein described, situate in the township of Kingsess, in the county of Philadelphia, to keep the banks, dams, sluices and flood-gates, in repair, and to raise a fund to defray the expense thereof.*

Passed 18th February, 1769.—Recorded A. vol. V. page 273.

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### CHAPTER DLXXXVIII.

*An ACT to enable the Recorder of Deeds, for the city and county of Philadelphia, to receive into his custody the ancient books and records of the corporation of Germantown.*

**WHEREAS** the late honourable William Penn, Esquire, Proprietary of this province, by his charter, bearing date the twelfth day of August, in the year of our Lord one thousand six hundred and eighty-nine, did incorporate divers persons therein mentioned,



1769. by the name of "The Bailiff, Burgesses and commonalty of Germantown, in the county of Philadelphia, in the province of Pennsylvania," and, among other powers and authorities, grant unto the said corporation a right to hold Courts of Record: And whereas the said persons did assume on themselves, and exercise the said powers and authorities, and held the said Courts of Record, until the year one thousand seven hundred and seven, and afterwards, and ever since, have altogether ceased from the exercise thereof, or any of them: And whereas, during the exercise of the said powers and authorities, divers judgments given, and orders and regulations made in pursuance thereof, were entered on record, and sundry deeds, conveyances and other writings, were recorded in the books of the said corporation; and it is expedient and necessary, for the benefit and security of the persons, whose interest and estates are concerned in the preservation of the said records, that they should be deposited in the care of a proper officer, legally authorized to give exemplifications and copies thereof: *Be it therefore enacted, That* the said books shall, immediately after the publication hereof, be deposited in the office for recording of deeds in the county of Philadelphia. And the record or entry of any such judgment, order or regulation, and of all deeds, conveyances and other writings, in the same books contained, or exemplifications or copies thereof, being examined by the Recorder of Deeds for the city and county of Philadelphia, and certified under his hand and seal of office, which he is hereby enjoined to put and affix thereto, shall be allowed, deemed and taken, and are hereby declared to be as good evidence, and as valid and effectual in law, as the originals themselves, and the same may be pleaded, given in evidence, and made use of accordingly.

Exemplifications, &c certified by the Recorder to be valid.

Passed 18th February, 1769.—Recorded A. vol. V. page 324.

## CHAPTER BXCIV.

*An ACT for regulating, pitching, paving and cleansing, the highways, streets, lanes and alleys; and for regulating, making and amending the water courses and common sewers, within the inhabited and settled parts of the city of Philadelphia; for raising of money to defray the expenses thereof; and for other purposes therein mentioned.*

**WHEREAS** the paving the streets, lanes and alleys, within the inhabited and settled parts of the city of Philadelphia, so far as they have been already paved, and the keeping the same clean, hath greatly contributed to the preservation of the health of the people inhabiting therein, and resorting thither: And whereas the law for effecting these good purposes is near expiring, and divers streets, lanes and alleys, within the said city remain yet unpaved; *Be it enacted, That* Thomas Say, Henry Lisle, Thomas Tilbury, Henry Drinker, Samuel Bryan, and John Mifflin, are hereby nominated, and appointed Commissioners for paving and cleansing the said streets; and that the said Thomas Say and Henry Lisle shall continue in their respective

Names of the Commissioners.

Time of their con-

offices until the second day of October next: and that Thomas Tilbury and Henry Drinker shall continue in their respective offices during the space of one year, from the said second day of October next; and that Samuel Bryan and John Mifflin shall continue in their respective offices during the space of two years, from and after the second day of October next ensuing the publication of this act. And in order to keep up a succession of persons in the said offices, to execute and perform the several duties, matters and things, by this act enjoined and required, *Be it further enacted*, That the freeholders and inhabitants of the said city, qualified to elect, or to be elected members of Assembly, at the time and place of their electing Burgesses to serve in Assembly, shall then and there, yearly, during the continuance of this act, in a peaceable manner, choose two persons for Commissioners for paving and cleansing the streets of the said city, to serve in the room and stead of the Commissioners, whose office shall end and terminate at that time, and to join with the four remaining Commissioners in the execution and performance of the duties and services enjoined them by this act, in manner following; that is to say, the said freeholders, at the time they deliver in their tickets for the choice of Burgesses, shall also deliver in writing, in one other piece of paper, to the Judges of the election, the names of two persons, to be Commissioners as aforesaid; and when all the electors appearing shall have delivered in their respective tickets, the Sheriff and Judges of the said election shall take an account thereof, and publish the persons duly elected to the service and office aforesaid, in like manner as by law is directed in cases of elections of Representatives to serve in the General Assembly of this province; which Commissioners, so from time to time to be chosen, shall be the Commissioners, to serve in the room and stead of the persons whose offices shall determine at the time of their election, and shall remain in their said offices during the space of three years; and when the said Commissioners shall from time to time be so chosen, the Sheriff of the county of Philadelphia, or others the Judges of the said election, then and so often shall take their names in writing, under the hands and seals of at least four or more of the said freeholders, and certify the same to the clerk of the Mayor's court of the said city, for the time being, that by him the same may be entered among the records of the said court. But before any of the said Commissioners herein nominated and appointed, or hereafter to be chosen by virtue of this act, shall take upon him or themselves the services and duties by this act enjoined and required, they, and each of them, shall take an oath or affirmation, of the tenor and effect following; that is to say, *That they will well and truly cause the debts arising by virtue of this act to be speedily adjusted, and the several sums of money hereby imposed to be duly collected, and applied to the purposes by this act intended, and to no other purpose; and that they will diligently attend, and faithfully discharge the duties and services enjoined them by this act, during their office of Commissioners, as aforesaid, according to the best of their skill and abilities.*

II. *And be it further enacted*, That the said Commissioners, or a majority of them, as soon as conveniently may be after the pub-

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tinuing in office.  
See chap. 1383. §. 34.  
The office of Commissioners abolished. See note at the end of this act.

Manner of choosing two Commissioners yearly, &c.

Commissioners qualification.

Commissioners to



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meet and  
consult re-  
specting the  
best method  
of keeping  
clean the  
streets, &c.

lication of this act, and so from time to time, as often as there may be occasion, shall meet together at some convenient place in the said city, and then and there consult together, respecting the best method and manner of paving and keeping clean such of the streets, and public lanes and alleys of the said city, as are within the inhabited and settled parts thereof; and of amending and repairing the common sewers of the said city already made: and of making, amending and repairing such as shall hereafter be made, for discharging and carrying off the water into the river; and of making, amending and repairing the public streets, roads and highways, within the said city, leading from any of the public roads in the country to the paved and regulated parts of the said streets; and contract with any person or persons for sand, stone, gravel, or any other materials, convenient and necessary for the uses and purposes aforesaid; and to contract, agree with, and hire such a number of pavers and workmen, as they shall judge necessary and proper to be employed, from time to time, in and about the premises; and to agree on, execute, and perform every other act, matter and thing, which to them shall appear necessary for the effectual paving and keeping clean the said streets, lanes and alleys, when paved, and other purposes aforesaid, from time to time, and at all times hereafter.

Mayor or  
Recorder,  
&c. to meet  
the Com-  
missioners,  
and agree  
which of  
the streets  
shall be  
first paved.

III. *And be it enacted*, That the Mayor or Recorder of the said city, and any four of the Aldermen, together with the Commissioners aforesaid, or a majority of the said Commissioners, shall meet together, as often as occasion may require, at some convenient place in the said city, and then and there consider, determine and agree on, which of the said streets, and public lanes and alleys, within the inhabited and settled parts of the said city, shall be first paved, having regard to the streets that are most used by the country in bringing their produce and effects to market, which are hereby directed to be first paved.

Who are  
to direct  
the descent  
of water  
courses, &c.

IV. *And be it enacted*, That the said Mayor or Recorder, and four Aldermen, together with any four of the Regulators of the said city, for the time being, shall appoint and direct the regulation of the said streets, lanes and alleys, and common sewers, with the degree of descent of each water course. *Provided always*, That no common sewer or water course, to be laid out, shall be so regulated and laid out, as to run through any lot or ground belonging to any private person or persons, unless the same shall be agreed to and approved of by at least four of the said Commissioners; and in every such case, that the damages sustained, or to be sustained, by reason thereof, by such private owner or owners, shall be valued and appraised by two indifferent persons, one of them to be chosen by the said Commissioners, and the other by such owner or owners; and also that the said damages shall be paid to such owner, by order of the said Commissioners, out of the monies arising by virtue of this act.

And regulate  
the common  
sewers.

V. *And be it further enacted*, That the said Mayor or Recorder, Aldermen and Regulators, shall have full power and authority to enter upon the lots, grounds and possessions of any person or persons, bodies politic or corporate, through which the said common sewers do or ought to run, to regulate them, and the said Commis-

sioners to make, amend and repair the same; provided that such common sewers be regulated, made, amended and repaired, with as little detriment and injury as may be to the said owners and possessors of such lots, grounds and possessions.

1769.

**VI.** *And be it enacted,* That if any person or persons whatsoever shall wilfully stop up or obstruct the passage of the waters of any of the common sewers already made, or hereafter to be made within the said city, he or they so offending shall forfeit and pay, for every such offence, any sum, not exceeding the sum of twenty-five pounds.

Penalty on persons obstructing the common sewers.

**VII.** *And be it enacted,* That the said commissioners, or a majority of them, from time to time, shall employ, hire, and agree with proper and capable persons to clean, the cart-way of the said streets, lanes and alleys, which have been heretofore, or shall be so paved as aforesaid, and to remove and carry off from thence all mud, dirt and other filth there found, that shall or may incommode the inhabitants, in such manner and form, and at such time or times, as they, the said commissioners, or a majority of them, with the Mayor or Recorder, and any four of the Aldermen aforesaid, shall direct and appoint; which said persons, so agreed with and employed, shall take upon themselves the office and duty of scavengers, pursuant to their respective agreements aforesaid, under the penalty of five pounds for every neglect or refusal; and if any such scavenger shall neglect or refuse to carry off and remove all and every part of the mud, mire, dirt and other filth, found in the streets, lanes and alleys aforesaid, agreeable to his contract with the said commissioners, he shall forfeit and pay any sum, not exceeding twenty shillings for every such offence.

Commissioners to employ scavengers, &c.

**VIII.** *And be it further enacted,* That the inhabitants and occupiers of the houses and lots, and the sextons, porters, or other keepers of churches, meeting-houses, academies, schools, and other public buildings, and burying-grounds, fronting the paved streets, lanes and alleys, within the said city, shall rake and sweep into the cart-way the dirt, soil, and other filth, to be found on the brick pavement or foot-way before their respective houses, lots or dwellings, or cause the same to be done, once at least in every week; that is to say, on every Friday, when the snow or ice on the said pavements does not prevent, that it may be removed by the said scavengers on the same day, or the day following, under the penalty of any sum, not exceeding five shillings, for every neglect or refusal.

Occupiers of houses and lots, sextons, &c. to cause their brick pavements to be swept weekly.

**IX.** *And be it further enacted,* That no person or persons whatsoever shall cast or lay, or cause to be cast or laid, any shavings, ashes, dung, or other filth or annoyance, on any pavement within the said city, under the penalty of any sum, not exceeding twenty shillings, for every such offence; but every such person and persons, having such shavings, ashes, dung, or other filth, shall keep the same in some other place, until the scavenger shall attend with his cart to carry off the same, which he is hereby enjoined to do once in every week, at least, if required, at the door of every such person, under the penalty of five shillings for every refusal, and to take and receive the same into his cart, and to remove the same out of the inhabited parts of the said city, under the penalty of five shillings for every neglect or refusal; *Provided always, and be it*

Penalty on persons laying shavings, ashes, dung, &c. on any pavement.



1769. *enacted*, That every such person having such mud, dung, ashes or other filth, so to be carried off, shall pay to every scavenger, for all such filth, and no other, as shall be occasioned by or arise from his particular trade, business or occupation, and is not incident to common house-keeping, at such rate as shall be from time to time settled and ascertained by the said commissioners, unless he, she or they shall choose to carry off the same at his, her or their own expense, in another manner.

Assessment of non-resident owners to be paid by the tenant, who may deduct the same out of his rent, &c.

X. *And be it enacted*, That if the owner of any house, or lot, which shall be rated and assessed by virtue of this act, or before whose front the foot pavement shall be hereafter directed to be paved, amended or repaired, by the said Mayor or Recorder, and Aldermen and Commissioners, as aforesaid, shall not reside within the said city, the tenant, or person occupying the same, shall pay his, the said owner's, rate and assessment, and pave and repair the foot-way before the front of his possession, as by this act is directed; and the taxes paid in pursuance of this act, and the money expended by such tenant in paving and repairing the foot-way aforesaid, in obedience to the order of the Mayor or Recorder, and four of the Aldermen, with any four of the commissioners, as aforesaid, shall be allowed by the owner, and defalked by the tenant out of the rent then due, or thereafter to become due, any law, usage or custom, to the contrary notwithstanding; and if any owner of any house and lot, before whose front the cart-way shall be paved, in pursuance of this act, or if any tenant of any such house or lot, shall refuse or neglect to pave and repair the foot-way agreeable to the direction and order aforesaid, every such owner, if a resident within the said city, and every such tenant of such non-resident owner, shall forfeit and pay for every foot fronting his possession, so neglected to be paved, the sum of one shilling; and that the said commissioners, or a majority of them, shall make, amend and repair the same, out of the public monies by this act directed to be raised, and shall recover the same of such resident owner, or tenant of such non-resident owner, respectively, as the case may require, in a summary way, before the Mayor, Recorder, or any Alderman of the said city, in the same manner as debts, not exceeding five pounds, are by law directed to be recovered by the Justices of the Peace of the respective counties within this province.

Commissioners, &c. to meet and estimate the necessary sums yearly.

XI. And for defraying the expenses and charges arising by virtue of this act, *Be it enacted*, That it shall and may be lawful to and for the commissioners aforesaid, or a majority of them, together with the City Assessors for the time being, or a majority of them, to meet, as soon as they conveniently can after the publication of this act, and on the sixth day of October yearly, and every year, unless the same shall happen to be on a Sunday, and then on the day following, at the court-house of the said city, or some other convenient place; and then and there to estimate and determine what sum and sums of money shall be necessary to be raised and levied on the inhabitants of the said city, for answering the purposes by this act intended.

And issue precepts to the constables.

XII. *And be it further enacted*, That the said commissioners, or any four of them, shall, within ten days after such estimate is made,

issue forth their precepts, directed to the constables of the said city, requiring them to bring to the said Commissioners and Assessors, within fifteen days next after the date of such precept, fair and true certificates in writing, upon their legal qualifications (which the said commissioners are hereby empowered to administer) of the names and surnames of all and every the persons dwelling or residing within the limits of their wards, and the names of all freemen, inmates, hired servants, and all other persons residing or sojourning in every of the said wards, together with an account of what houses, lands, tenements, rent-charges, bound servants and negroes, with their ages, they respectively hold or possess in such ward, without concealment, fear, malice, favour or affection, upon pain of forfeiture of any sum not exceeding five pounds, to be levied as by this act is appointed; and every of the said constables shall have and receive from the treasurer hereafter to be appointed, two pence per pound, out of the sums to be collected from the inhabitants by them returned, for their care and trouble in executing and returning the said precepts in manner aforesaid: And that the said Commissioners and Assessors, or a majority of them, shall meet at the day and place where the said precepts shall be made returnable, and then and there receive the constables returns: And that the said Assessors shall thereupon, by the legal qualifications of the said constables, or other credible persons, or by any other lawful ways or means, inform themselves what persons and estates in the said city are rateable by virtue of this act, and shall forthwith equally and impartially assess themselves, and all others rateable as aforesaid, having a due regard to such as are poor, and have a charge of children, and exempting out of such assessments all single men, who, at the time of assessment, are under twenty-one years of age, or have not been out of their servitude or apprenticeship twelve months; and all transient persons and strangers, who shall have any goods and merchandize for sale in the said city, shall, for such goods and merchandize, be rated in proportion to the said inhabitants: And the said Assessors, for their time and labour in the premises, shall be allowed two pence per pound for the whole sums assessed, after the assessment is rectified and adjusted by the commissioners, according to the direction of this act, to be paid by the treasurer herein after appointed, and to be equally divided amongst them; which said poundage shall be to the Assessors for the time being, in full satisfaction for all services and attendances required of them by this act.

XIII. *Provided always*, That no such assessment or assessments, to be made by virtue of this act, in any one year, shall exceed the value of three pence in the pound; and that no person shall be chargeable within the intent and meaning of this act, unless he be assessed at eight pounds, or upwards; and that they, the said Assessors, and each of them, shall before they take on themselves the duties enjoined and required by this act, take a legal qualification to the effect following; that is to say, *That they will well and truly cause the rates and sums of money by this act imposed to be duly and equally assessed and laid, to the best of their skill and knowledge, and therein shall spare no person for favour or affection, nor grieve any*

1769.

bles, to bring  
in certifi-  
cates of all  
persons resi-  
ding within  
their wards,  
&c.

Assessments  
not to exceed  
three pence  
in the pound,  
&c.



1769. *for hatred or ill will ; and that they, and each of them, the said Assessors, will diligently attend, and faithfully execute the said office, during the term of their continuance therein, according to the best of their abilities and judgment ; which qualification the Mayor or Recorder, or any two of the Aldermen aforesaid, are hereby empowered and required to administer, and to certify the same to the clerk of the sessions of the peace of the said city, to be by him filed among the records and papers of his office.*

Commissioners and Assessors to appoint a clerk.

XIV. *And be it further enacted, That the said Commissioners and Assessors, the better to enable them to discharge the duties enjoined them by this act, shall choose and employ a fit and able person for their clerk, who shall, in books to be provided for that purpose by the commissioners, make such entries, and keep such accounts, as he shall be directed to do by the Commissioners and Assessors, or a majority of them, from time to time ; and shall also make such entries, and keep such accounts, as he shall be required to do by the commissioners, or a majority of them, of all such matters and things enjoined them by this act ; and also to do and perform all other duties by him to be done in pursuance of this act ; for which he shall be allowed such a reasonable reward, as the said commissioners, or any four of them, shall appoint, which shall, by an order from the said commissioners, or any four of them, be paid him by the treasurer.*

Assessors to appoint fit persons to be Collectors.

XV. *And be it further enacted, That the said Assessors shall, after the assessments made as aforesaid, appoint one or more fit person or persons to be collector or collectors of the said assessments from time to time, and shall cause fair duplicates of the assessments to be drawn ; one part thereof shall be by the clerk delivered to the commissioners, and the other part to the collector or collectors, with directions under the hands of four or more of the commissioners to every such collector, indorsed on his duplicate, or annexed thereunto, requiring him or them to demand of the parties the respective sums of money wherewith they are chargeable, and acquaint them of the day of appeal, which shall be appointed by the said commissioners within thirty days after the assessments are made ; but where any of the said collectors cannot meet the party, of whom demand is to be made as aforesaid, he or they shall leave notice in writing with some of the family, or at the place of the party's last abode, signifying also the day of appeal, at which day the said collector or collectors shall return their duplicates, with the names of such persons, and value of such estates as shall be concealed, undervalued or omitted in the constables returns ; and if any person or persons shall find him, her or themselves, aggrieved with any of the said assessments, supposing the same to be unequal, he, she or they may appeal to the commissioners aforesaid : And the said commissioners are hereby required to meet on the said day of appeal, where the Assessors shall attend, and lay before the commissioners all the written certificates of the names of the taxables, and the account of their estates returned by the constable, as this act requires, together with the particular valuation set by the said Assessors upon the persons and estates so returned ; whereupon the commissioners shall take due notice thereof, and may, if they think pro-*

per, examine the persons appealing, upon their legal qualification, concerning the cause of their appeal (which qualification they are hereby authorized to administer) and upon such examination, or other proof, they are hereby empowered to diminish or add to such person's rate or assessment, as to them shall seem just and reasonable, with power also to call before them such persons, and take notice of such estates, as they find are omitted in the said assessments, in order to rectify them; and if the persons so omitted refuse or neglect to appear, and give an account of the value of their estates, they shall be rated and assessed according to their estates, by the judgment of the said Commissioners, or a majority of them: And the said Commissioners, upon hearing the appeals, shall rectify and adjust the said assessments, by abating or adding to the sums contained in the duplicates; and shall also cause their collector to give the parties concerned, where omissions are supplied, or additions made to their assessments, five days notice to appear before the Commissioners, and make their objections thereunto; and the clerk shall, within five days next after the day of appeal, deliver to the Treasurer, herein after directed to be appointed, a true account of the sums total which the Collector or Collectors aforesaid shall be charged with pursuant to this act; and the said Commissioners shall cause their clerk to draw fair duplicates of the assessments so rectified as aforesaid, and deliver them to the Collector or Collectors to be appointed as aforesaid, within five days after the said day of appeal, with a warrant annexed thereunto, under the hands and seals of four or more of the said Commissioners, requiring him or them forthwith to collect and receive from the persons assessed the several sums in the duplicates mentioned; and in case any person or persons so rated or assessed, by virtue of this act, shall neglect or refuse to pay the sum or sums so assessed, for the space of sixty days after demand made as aforesaid, it shall be lawful for the said Collector or Collectors, by virtue of a special warrant for that purpose, signed and sealed by any four or more of the said Commissioners, who shall forthwith grant the same, and shall thereby empower the said Collector or Collectors to call to their assistance, if occasion be, any Constable or other person, and in case of resistance, to break open, in the day time, any house, trunk, box, chest, closet, cupboard or other things, where any such offender's goods, chattels or effects, are supposed to be, and make distress and sale thereof, rendering the overplus, if any be, to the owners, after reasonable charges deducted; but if no distress can be found by the Collector or Collectors, and the party refuses or neglects to shew them goods or chattels of his own, forthwith to satisfy the money due, with reasonable charges, then the said assessments to be levied by imprisonment of the person so refusing or neglecting to pay as aforesaid, until the same shall be paid, or on the goods and chattels of any of his tenants, if such there be, and the delinquent shall be obliged to discount it out of the first rent that shall afterwards accrue from the estate rented: *Provided always*, That where effects cannot be found, sufficient to answer the whole sum in arrear, with charges as aforesaid, then distress shall be made for so much as the effects extend to, and the party be imprisoned as aforesaid, only for the residue thereof, with incident



1769.

charges; all which charges of distress, assistance, and bringing to prison, shall be adjusted and settled by any four or more of the said Commissioners, when such occasion shall happen.

Collectors  
to pay the  
monies by  
them receiv-  
ed to the  
Treasurer,  
once in six  
weeks, &c.

**XVI.** *And be it further enacted,* That the said Collector or Collectors shall, once in six weeks at least, render a just and true account of, and bring in and pay unto the Treasurer, herein after directed to be appointed, all such sums of money as he or they shall have received, and shall pay the whole; and every of the sums of money assessed in his or their duplicates, within six months next after the day of appeal (such deficiencies as the said Commissioners, or any four of them, shall allow, being first deducted;) and the said Treasurer shall give receipts to the Collectors for what they shall so bring in and pay, from time to time, which receipts shall be the Collectors discharges for so much; and the said Treasurer shall, from time to time, signify in writing to the said Commissioners, how much every Collector brings in and pays as aforesaid; and when the said Collectors, or any of them, are negligent, or refuse to do their duty in the premises, the Treasurer is hereby required forthwith to signify the same, by way of complaint, to the Commissioners aforesaid.

Penalty on  
Coll ctors  
for refusal  
or neglect  
of duty, &c.

**XVII.** *And be it further enacted,* That if, upon complaint of the Treasurer to the Commissioners, it shall appear that the said Collector or Collectors, having taken upon him or themselves the duties enjoined him or them by this act, shall refuse or neglect to pay the said sums of money, which he or they shall be respectively charged to collect, within the times limited by this act, every such Collector, so refusing or neglecting, shall forfeit and pay to the Treasurer the sum of five pounds, and shall also pay all the arrearages of such assessment which he was appointed to collect, to be levied by a warrant under the hands and seals of the said Commissioners, or any four of them, directed to the Sheriff of the city and county of Philadelphia, who is hereby authorized and empowered to execute such warrant upon the goods and chattels of such Collector or Collectors; and in case goods and chattels sufficient cannot be found, then to imprison such Collector or Collectors, until payment be made; and every Collector so distrained on, and having made full satisfaction as aforesaid, is hereby empowered, without any further warrant, to distrain for his own use upon all such, as shall neglect or refuse to pay him the arrearages due.

Collectors  
allowance.

**XVIII.** And the said Collector or Collectors shall, for his or their trouble and service by this act required and enjoined, retain in his or their hands six pence per pound, for all sums of money by him or them respectively collected; and if the said Collector or Collectors shall refuse or neglect to take upon him or themselves the trust and duty required of him or them, he or they shall forfeit and pay to the Treasurer, herein after mentioned, the sum of five pounds, and the said Assessors shall appoint some other fit person or persons, in place or stead of the Collector or Collectors so refusing or neglecting as aforesaid.

Penalty on  
Commis-  
sioners  
refusing or

**XIX.** *And be it further enacted,* That if any of the said Commissioners appointed by this act, or those who shall be chosen to succeed them in the said trust, shall refuse or neglect to take upon him

or themselves the services and duties hereby required of him or them, he or they, so refusing or neglecting, shall pay to the Treasurer aforesaid ten pounds; or if any of the said Commissioners shall happen to die, during the time for which they are appointed or chosen, the other Commissioners and Assessors for the time being, or a majority of them, shall, in every such case, appoint one or more fit person or persons, in place and stead of the Commissioner or Commissioners so refusing or dying. 1769.

neglecting  
to serve.

XX. And the said Commissioners, for the services required and enjoined them by this act, shall be paid by the Treasurer five shillings each for every day's attendance on that particular service, which shall be to the Commissioners for the time being in full satisfaction for all the attendance and services required of them by this act. Commissioners allowance.

XXI. *And be it further enacted,* That the said Commissioners for the time being, or the major part of them, are hereby empowered and required, as often as there may be occasion, to choose a Treasurer, which Treasurer, when so chosen, is hereby empowered and required to receive all the money arising as well from the said assessments, as also the fines and forfeitures imposed, and other monies arising by virtue of this act; and the said Treasurer shall keep a distinct and fair account, in a book to be provided by him for that purpose, of all the rates and assessments made, or to be made, as aforesaid: and also of all monies by him so received, and also of all disbursements and payments he shall make, by orders from the Commissioners, or any four of them, whose order to the said Treasurer, from time to time, shall be sufficient discharges for the payment of such monies as shall come to his hands; which orders the said Commissioners, or any four of them, are hereby authorized and empowered to draw from time to time, for the uses and purposes in this act mentioned and specified. Commissioners to choose a Treasurer.

XXII. *And be it further enacted,* That the said Treasurer for the time being, before he enters upon the execution of his said office, is hereby required to give a bond, with one or more sufficient sureties, to be by them the said Commissioners approved of, in the penalty of one thousand pounds, lawful money of this province, with condition for the payment of all such monies which shall come to his hands by virtue of this act, according to the orders drawn on him as aforesaid, from time to time, and not otherwise, and for the due performance of his duty in the trust hereby committed to him; and the said Treasurer shall yearly bring in his accounts, and settle the same with the Commissioners aforesaid, or a majority of them; which said accounts so settled and adjusted, shall be laid before the Mayor, Recorder, Aldermen and Grand Jury of the said city, at the General Quarter Sessions of the Peace to be held for the said city in the month of January, yearly, together with the books, receipts and vouchers, if required; which said accounts, books, receipts and vouchers, being examined by the Mayor, Recorder, Aldermen and Grand Jury aforesaid, shall be delivered back safely, without alteration, to the said Treasurer, and a true copy of the said accounts, to be made out by the said Treasurer, and delivered to the Court, shall be filed and kept among the records of the said Treasurer to give security.



1769. Court. And the said Treasurer shall be allowed, for his trouble in keeping such accounts, and receiving and paying all such money as shall come into his hands by virtue of this act, at the rate of six pence in the pound.

His allowance.

Treasurer to be removed for neglect of duty, &c.

XXIII. *And be it further enacted*, That if the said Treasurer shall refuse or neglect to do his duty, as by this act is required, he shall be removed from his said office, by any four or more of the said Commissioners; and in case of such removal, or if the said Treasurer shall happen to die, the Commissioners, or the major part of them, shall appoint another in his place, who shall give security, as herein before directed; and the Treasurer so removed, or the executors or administrators of the said Treasurer so dying, shall deliver to the succeeding Treasurer all books, public accounts and papers, belonging to the said office, whole and entire, and undefaced; and shall likewise pay to the said succeeding Treasurer all such sum and sums of money as he may have received, or have been paid to him, in pursuance of this act, under the penalty of two hundred pounds, to be recovered in the manner and for the uses herein after mentioned.

Manner of recovering fines, &c.

XXIV. *And be it further enacted*, That all the penalties, fines and forfeitures herein before imposed by this act, the manner of levying and recovering of which is not before directed, if they do not exceed the sum of five pounds, shall be recovered before one of the Justices of the Peace of and for the said city, and shall be levied by warrant, under the hand and seal of such Justice, or of any other Justice of the Peace of and for the said city, to any Constable of the said city directed, who is hereby empowered and required to execute the same, by distress and sale of the goods and chattels of the offender; and where goods and chattels sufficient cannot be found, then the party or parties offending shall be committed to the common gaol of the said city, there to remain until payment made: And if such penalties, fines and forfeitures, do exceed the sum of five pounds, then to be recovered by action of debt, bill, plaint or information, in any county court within this province, wherein no essoin, protection, or wager of law, to be allowed; all which recoveries shall be had in the name of and by the Treasurer aforesaid, for the time being, to whom the sums recovered shall be paid, to be by him applied towards defraying and paying the charges and expenses arising by virtue of this act, to be recovered with costs of suit.

Deficiency in any one year's rate to be paid out of the succeeding year's assessment, &c.

XXV. *And be it further enacted*, That in case there be any deficiency in any one year's rate or assessment to be made as aforesaid, so that all the wages and allowances for the purposes herein before mentioned, and other incident charges cannot be fully paid and satisfied in that year, then, and in such case, the deficiency so happening shall be paid out of the next succeeding year's rate or assessment; and if there shall happen to be any surplus money collected by such rates and assessments in any one year, such surplus shall be carried on to the credit of the account of the next year's rate and assessment, to be applied to such use, and in such manner, as the rates and assessments, to be collected as aforesaid, are directed by this act to be laid out and applied.

XXVI. And whereas, in pursuance of the power and authority given in and by virtue of an act of Assembly of this province, entitled *A Supplement to the act, entitled An Act for regulating, pitching, paving and cleansing the streets, lanes and alleys, &c.* passed in the third year of his present Majesty's reign, the Commissioners for cleansing and paving the streets of the city of Philadelphia did borrow of the Commissioners nominated and appointed in and by a certain act of Assembly, passed in the second year of his present Majesty's reign, entitled *An Act for granting to his Majesty the sum of twenty-three thousand pounds, for the purposes therein mentioned*, with the assent and approbation of the governor, the sum of eight thousand pounds, for the uses, intents, and purposes, mentioned and specified in the said recited supplementary act, and gave their notes and certificates, in writing, for the re-payment thereof: And whereas the said sum of money so borrowed yet remains unpaid, and the act which made provision for the re-payment thereof being repealed and made void by this act, it is but just and reasonable that the said lenders should be assured and secured in the disposition and application of the said monies so borrowed, to the uses, intents and purposes, to and for which the same by law was given and granted to his Majesty, whenever it shall become expedient and necessary: *Be it therefore enacted*, That the said eight thousand pounds, so borrowed as aforesaid, shall be repaid and discharged out of the monies directed to be raised and levied in and by virtue of this act, on or before the first day of May, which shall be in the year of our Lord one thousand seven hundred and eighty, or, if the said sum of eight thousand pounds shall be sooner demanded by the Governor of this province, for the time being, and the said Commissioners so lending the same, whenever the same shall be demanded; and that the said Commissioners for cleansing and paving the streets aforesaid, for the time being, whenever such demand shall be made as aforesaid, or at the expiration of the term before mentioned, which shall first happen, shall draw orders on the Treasurer appointed, or to be appointed by them, payable to the Provincial Treasurer, for the discharge and payment of the said notes and certificates, until the principal sum of all and every such note and certificate shall be fully paid and discharged; but if it shall so happen, that, at the time when the said sum or sums of money shall be demanded as aforesaid, there shall not be in the hands of the said Treasurer a sufficient sum of money to satisfy and discharge the sums due on the said notes and certificates, then, and in such case, the said Commissioners for pitching and paving the said streets shall, and they are hereby authorised and empowered to borrow and receive, from such person and persons as shall be ready and willing to lend and advance the same, all such sums of money as shall be requisite and necessary to pay and discharge such deficiency or balance, so remaining unpaid to the Provincial Treasurer aforesaid; which said lenders shall have and receive, for the use and forbearance of their respective loans, until the same shall be paid off, interest, not exceeding six pounds yearly for every hundred pounds so lent; and that the said lenders shall have and receive a note and certificate, in writing, of and for the sum lent,

1769.

Manner of repaying the sum of 8000*l.* borrowed by virtue of a former act, &c.



1769. with the interest thereof, signed by the said commissioners so borrowing the same; which said note and certificate shall be registered in a book by them to be kept for that purpose; and that the said lenders shall be paid by the said commissioners the sum or sums of money of them respectively borrowed, with the interest thereof, out of the monies which shall arise, be collected, and paid into the hands of the Treasurer aforesaid, in and by virtue of this act.

Lenders  
may assign  
their certi-  
ficates, &c.

XXVII. *And be it further enacted,* That all and every person and persons, to whom any money shall be due on account of the loan last aforesaid, by virtue of this act, his, her or their executors, administrators or assigns, after such note and certificate shall be registered as aforesaid, may assign, transfer, and make over, by proper words of assignment, to be indorsed on his, her or their certificate, all his, her or their right, title or interest, of such note and certificate, to any other person or persons whatsoever; which assignment shall entitle such assignee or assignees, his, her or their executors, administrators or assigns, to the benefit thereof, and payment thereon; and such assignee or assignees, their executors, administrators or assigns, may in like manner assign the same again, and so *toties quoties*; and afterwards it shall not be in the power of such person or persons, who hath or have made such assignment, to make void, release, or discharge the same, or the monies thereby due.

Manner of  
appropriat-  
ing the sums  
repaid the  
Provincial  
Treasurer.

XXVIII. *And be it further enacted,* That the sum and sums of money, which the governor of this province, for the time being, and the commissioners aforesaid, have so lent, when the same shall be repaid to the provincial treasurer as aforesaid, shall be applied, disposed of, and appropriated by the same persons, in the same manner, and to the same uses, intents and purposes, as if the said monies had never been lent, any thing herein to the contrary notwithstanding.

Commis-  
sioners em-  
powered to  
purchase  
two conve-  
nient lots  
for landing  
places, &c.

XXIX. *And be it further enacted,* That the said commissioners shall and may, as soon as conveniently may be after the publication of this act, out of the monies arising by virtue thereof, purchase two convenient lots for landing places on the river Delaware, one at or near each side of said city, and within the same, for landing of boards, hay, and other things, which may be brought, from time to time, to the market of the same, for the use of the inhabitants and citizens thereof; which said lots, when so purchased, shall be vested in the mayor and commonalty of the city of Philadelphia, in trust, nevertheless, to permit and suffer the Mayor, Recorder and Aldermen of the said city, with the consent and approbation of any four of the Assessors thereof, for the time being, to take and receive the issues, profits and tolls of the said lots and landing places, and to dispose of the same, with the concurrence of the Assessors aforesaid, for the use, benefit and advantage of the inhabitants of the said city, and for no other use, intent and purpose whatsoever; and the said commissioners are hereby farther authorized and empowered to cleanse and repair the dock, extending from the river Delaware across Front-street to the Second-street, in the said city, and every part thereof, in such manner as to them shall seem most conve-



nient, useful and advantageous to the public; and for that purpose shall and may contract and agree with such person and persons as they shall think proper, from time to time, to be employed under their direction in the premises, and, generally, to agree on, execute and perform all and every other act, matter and thing, which to them shall appear necessary for the effectual cleansing and repairing the said dock, and every part thereof, from time to time, and at all times hereafter, and to defray the expense thereof out of the monies directed to be assessed, levied and raised by this act. 1769.

**XXX.** *And be it further enacted,* That if any person or persons shall, after the publication of this act, cast or throw down, out of any cart, waggon or other carriage, any rubbish, dirt or earth, in any public street, lane or alley of the city of Philadelphia, save only in such parts and places as shall be appointed and agreed on by the said commissioners for pitching and paving the said streets, every such person or persons shall forfeit and pay, for every such offence, the sum of five shillings, and pay the costs of removing the same; and if any person or persons, save the said commissioners, shall destroy, remove or pull down any bar, chain, rope or fence, which the said commissioners shall hereafter cause to be set up in or across the said streets, lanes or alleys, for the preservation of the pavements then newly made, or to be made, every such person, who shall offend in the premises, shall forfeit and pay the sum of three pounds for every such offence.

Penalty on persons casting rubbish in any public street, &c.

**XXXI.** And whereas the paving the streets of the city of Philadelphia hath been attended with great expense to the inhabitants thereof, and it is necessary that due care be taken to preserve the pavements already made, and those which shall hereafter be made, from any and every avoidable and unnecessary injury.

**XXXII.** And whereas nothing can be more destructive to pavements of any kind, and particularly to those newly made, than the carrying large and excessive weights and burthens in carriages, the fellies of the wheels whereof are of small breadth, whereby the stones of such pavements are loosened and torn up, and the pavements themselves in a great measure ruined and destroyed: For remedy whereof, *Be it enacted,* That no waggon, wain or cart whatsoever, belonging to any person or persons whatsoever, residing or inhabiting within the said city of Philadelphia, or within the Northern Liberties thereof, or within the district of Southwark, or the townships of Moyamensing or Passyunk, shall travel, pass or be drawn on any of the paved parts of the said city, with any greater number of beasts of draught than three, if a four wheel carriage, and if a two wheel carriage, with any greater number of beasts of draught than two, unless the fellies of such wheels shall be of the breadth or guage of four inches from side to side at least; and that no such wheel carriage, belonging to persons residing in the places aforesaid, shall travel, pass or be drawn in the said city, with or by any number of oxen or horses whatsoever, unless the fellies of the wheels thereof shall be of the breadth or guage of four inches from side to side at the least (carts with one horse, stage and light travelling waggons for passengers, excepted;) and that every owner or owners of such wheel carriage, which shall pass or be drawn in the

Penalty on owners of carriages passing on the paved parts of the city, contrary to this act.

See post. chap. 2046. and the note at the end of this act.



1769. said city, contrary to the directions, tenor, true intent and meaning of this act, shall, for every such offence, forfeit and pay the sum of five pounds, to be recovered as debts not exceeding five pounds are by law directed to be recovered, or otherwise shall forfeit any one of the beasts of draught drawing such wheel carriage (excepting the shaft or thill horse) together with the gears, bridle, halter, and other accoutrements to such beast of draught belonging.

Proof of the offence to be made on oath or affirmation, &c.

XXXIII. *And be it further enacted,* That the person or persons making such seizure or distress as aforesaid, shall deliver the horse or ox so seized and distrained, with the accoutrements aforesaid, into the custody of some one of the constables of the said city; and every such constable is hereby required to take and receive, and safely keep the same, till the person or persons making such seizure or distress shall make proof, upon oath or affirmation, before some Justice or Justices of the said city, of the offence committed; and the said Justice or Justices, before whom such proof shall be made to their satisfaction, is and are hereby empowered and required to issue his or their precept to such constable, to sell and dispose of the beast so forfeited, with the accoutrements aforesaid, at public auction or vendue, first giving due notice of such sale; and the money arising therefrom the said constable shall pay, one moiety thereof to the party or parties so seizing or distraining the said beast, and the other moiety to the said commissioners, to be applied towards paving the said streets, after deducting from the whole such reasonable charges as the said Justice or Justices shall allow and direct; but in case no such proof shall be made within twenty-four hours next after such seizure, that then such beast shall be returned to the owner or owners thereof, without any costs or expenses.

Penalty on persons obstructing the measuring the fellies of wheels.

XXXIV. *And be it further enacted,* That if any person or persons shall hinder, prevent or obstruct the measuring or gauging of the fellies of such wheels, or the seizing or distraining of any horse or beast of draught, hereby directed to be forfeited, or shall use any violence to any person or persons, who shall attempt to measure and gauge the said fellies, or to seize or distrain such beast as aforesaid, every such person or persons so offending shall, for every such offence, forfeit and pay the sum of ten pounds, being thereof legally convicted in any Court of Quarter Sessions of the Peace in and for the said city.

The fellies originally the full breadth excepted.

XXXV. *Provided always nevertheless,* That if it shall appear that the fellies of such wheels were originally made of the full breadth prescribed and directed by this act, and to have become less by the wear or use thereof, except the same shall be less than three inches and one half wide, the penalties and forfeitures hereby imposed on the owner or owners thereof shall not be incurred, nor the same recovered in manner aforesaid, or in any other manner whatsoever.

Regulation relating to waggons, and other carriages, passing through the paved parts of the city, &c.

XXXVI. *Provided also, and be it enacted,* That nothing in this act contained shall be deemed, held or construed, to debar or prevent any person or persons, residing within the said city, district or townships, from transporting in his, her or their waggon, wain or cart, for his, her or their own proper use, but not for hire, any matters or things whatsoever, with two beast's of draught only (except



stones, bricks, lime, loam, sand, gravel, iron, lead, cordwood, coal, 1769.  
 scantling, timber and boards) provided such matters and things do  
 not exceed in any one load half a ton weight, on or through any of  
 the paved parts of the said city, and with any greater number of  
 beasts of draught, within or through any other parts of the said city,  
 not paved, although the fellies of the wheels of such waggon, wain  
 or cart, be not of the dimensions aforesaid, any thing in this act  
 contained to the contrary notwithstanding.

**XXXVII.** *And be it further enacted,* That no dray, or other Penalty on  
 carriage, used for the transportation of merchandize from one part of drays pas-  
 the city to another by any porter or drayman, shall travel, pass or sing on the  
 be drawn on the paved parts of the said city, unless the fellies of paved parts  
 the wheels of such dray, or other carriage, shall be of the breadth or of the city,  
 gauge of four inches, at the least, from side to side, under the pe- unless the  
 nalty of five pounds, to be paid by the owner of such dray, or other fellies be of  
 carriage, and to be recovered as debts not exceeding five pounds are the breadth  
 directed by law to be recovered; one moiety thereof to the person of four  
 who shall sue for the same, and the other moiety thereof to the com- inches.  
 missioners for cleansing and paving the streets, to be applied to the  
 paving of the same.

**XXXVIII.** *And be it further enacted,* That every waggoner and Carters, &c.  
 carter, employed to haul wood for the inhabitants of the said city, employed  
 district of Southwark and townships aforesaid, shall have in his to haul  
 said waggon or cart, of his own property, a sufficient number of cordwood,  
 hewn standards, for preventing the wood from falling off from his to have a  
 carriage, marked with the initial letters of his christian and surnames, sufficient  
 on the outer side of the said standards, under the penalty of five number of  
 shillings; and that if any waggoner or carter shall take and appro- hewn  
 priate any wood, belonging to any of the inhabitants aforesaid, standards,  
 which he shall be hired to haul, and shall apply or appropriate the marked  
 same to his own use, or shall not deliver it to the true owner or pur- with their  
 chaser thereof, every such person, so offending, shall forfeit and names, &c.  
 pay two shillings for every stick or piece of wood, so appropriated  
 or detained, to the owner or purchaser thereof, being first legally  
 convicted of the said offence before any Justice of the Peace of the  
 city or county of Philadelphia.

**XXXIX.** *Provided also,* That if any person or persons, shall Persons ag-  
 conceive him, her or themselves, aggrieved by any judgment to be grieved.  
 given by virtue of this act, if the same shall exceed the sum of forty may ap-  
 shillings or the value thereof, it shall and may be lawful for such peal, &c.  
 person or persons, within the space of six days next after the giving  
 such judgment, but not after, to appeal therefrom to the next  
 Court of Common Pleas to be held for the said county, he, she or  
 they first entering into recognizance, with at least one sufficient sure-  
 ty, in such a sum as shall be sufficient to answer the said penalty,  
 or value of the thing forfeited, together with all such costs as shall  
 be awarded, to prosecute the said appeal with effect, and to abide  
 the order and judgment of the said court; which said court is here-  
 by authorized and required to accept and receive the said appeal,  
 and to proceed therein according to the usage and practice in cases  
 of appeals for debts above forty shillings, and not exceeding five  
 pounds.



1769.

Penalty on  
distillers,  
&c. dis-  
charging  
foul and  
nauseous  
liquors,  
&c.

**XL.** And whereas great complaint is made by divers inhabitants of the city and suburbs of Philadelphia, that distillers, soap-boilers and others, frequently discharge large quantities of foul and stinking liquors, the returns from their stills and boiling vessels, on the adjacent grounds, or into the kennels of the public streets, lanes or alleys, to the great annoyance of the inhabitants, or by discharging the same into wells, vaults or sinks, dug for that purpose, have injured, if not totally ruined, their neighbours' waters; and that there are a variety of other nuisances in and near the said city, to the great annoyance and damage of the inhabitants: To prevent which inconveniences and damages, *Be it enacted*, That if any distiller, soap-boiler or tallow-chandler, within the said city, district of Southwark, or built parts of the Northern Liberties, shall, after the publication hereof, by themselves, their agents, journeymen or servants, presume to discharge out of or from any still-house or work-shop, foul and nauseous liquor of any kind whatsoever, into or upon any adjacent ground, or into any well, vault or sink, within the said city, district or township, every person so offending, and being thereof legally convicted in the Court of Quarter Sessions of the Peace held for the said city or county respectively, shall, for every such offence, forfeit and pay the sum of twenty pounds.

Commissioners, &c.  
to limit the  
depth of all  
wells dug  
for privies,  
&c.

**XLI.** And, the more effectually to preserve the waters in the said city, district of Southwark, and Northern Liberties, wholesome and fit for use, *Be it enacted*, That the Commissioners by law appointed for paving the streets of the said city, and Supervisors of the district of Southwark and township of the Northern Liberties respectively, with the assent of the Mayor or Recorder, and any two Aldermen of the said city, or any two Magistrates of the county of Philadelphia aforesaid, shall limit, direct and appoint the depth of all vaults, wells and sinks, hereafter to be dug in the built parts of the said city, district or township, for privies or necessary-houses; which regulation, being so made as aforesaid, shall be advertised in one at least of the newspapers of the said city, and then deposited in the hands of the Clerk of the Court of Quarter Sessions for the city and county of Philadelphia, subject to the inspection of any inhabitant of the city, district and township aforesaid, applying for that purpose; and that if any person or persons shall dig, or cause to be dug, any such vault, well or sink, for privies or necessary-houses, of any greater depth than shall be limited and appointed as aforesaid, every such person or persons, so offending, and being thereof legally convicted as aforesaid, shall forfeit and pay the sum of twenty pounds, and the person or persons employed in digging the same shall forfeit the sum of ten pounds.

Distillers,  
&c. not to  
discharge  
nauseous li-  
quor, so as  
to run  
through the  
streets, &c.

**XLII.** And *be it further enacted*, That if any distiller, soap-boiler or tallow-chandler, within the said city, district or township, shall, as aforesaid, discharge any foul or nauseous liquor from any still-house or work-shop, so that such liquor shall pass into or along any of the streets, lanes and alleys of the said city, district or township; or if any soap-boiler or tallow-chandler shall keep, collect or use, or cause to be kept, collected or used, in any of the built parts of the city, district or township aforesaid, any stale, putrid or stinking fat, grease or other matter; or if any butcher shall keep, at or



near his slaughter-house, any garbage or filth whatsoever, so as to annoy or offend any neighbour, or any person whatsoever, he, she or they, so offending, and being thereof convicted before any Justice of the Peace of the said city or county respectively, shall forfeit and pay, for every such offence, the sum of thirty-five shillings. 1769.

**XLIII.** *And be it further enacted,* That if any person or persons, shall, after the publication hereof, presume to cast, carry, draw out, or lay any dead horse, or other dead carcase of cattle, sheep, hog, or dog, or any excrement or filth from vaults, privies, or necessary-houses, and shall leave such carcase, carrion, or filth, without burying the same a sufficient depth in the ground, on any part of the commons of the said city, or on or near any of the streets, lanes, alleys or highways, within the said city, district or township, adjoining the same, every person or persons so offending, and being convicted thereof before any Justice of the Peace of the city or county of Philadelphia respectively, shall forfeit and pay for every such offence, the sum of thirty shillings. Penalty on persons laying carrion &c. on the commons.

**XLIV.** *And be it further enacted,* That if any person or persons shall, after the publication hereof, cast, throw or lay any carcase, carrion or filth whatsoever, or any dirt, rubbish, or other annoyance or obstruction whatsoever, into the public water-course of the said city, commonly called **The Dock**, and shall thereof be convicted before any Justice of the Peace of the said city as aforesaid, every such offender shall, for every such offence, forfeit and pay such a sum of money, not exceeding forty shillings, as the said Justice, before whom the offender shall be convicted, shall think reasonable. Or throwing the same into the Dock.

**XLV.** And whereas, by late extraordinary encroachments of cellar-doors, steps and porches, made in the streets of the said city, of jut-windows, bulks, and other incumbrances, the said streets are greatly obstructed; and by a number of spouts or gutters, set at the eaves of pent-houses and other places in the said streets, large collections of water are discharged in rainy seasons, on persons passing near the same: *Be it therefore further enacted,* That if any person or persons shall hereafter make and set up, or shall cause to be made and set up, in any street of fifty feet wide, or upwards, within the said city, any porch, cellar-door or step, which shall extend beyond the distance of four feet three inches into such street, or a proportionate distance into any narrower street, where the same shall be made or set up; and if any person or persons shall hereafter make and set up, or cause to be made and set up, any bulk, jut-window or incumbrance whatsoever, whereby the passage of any street shall be obstructed, or shall so place, or cause to be placed, any spout or gutter, whereby the passage of any street shall be incommoded, every person offending, and being legally convicted thereof before any Justice of the Peace of the said city, shall, for every such offence, forfeit and pay the sum of thirty shillings, and shall forthwith remove, or cause the said nuisance to be removed. Regulations relating to encroachments by cellar-doors, &c.

**XLVI.** *And be it enacted,* That the owner or owners of any house within the said city, having at the publication hereof any porch, cellar-door or step, extending into any street beyond the limitation aforesaid, or having fixed or fastened to such house any bulk, jut- Owners of porches, &c. exceeding the above limitation, to be



1769. window, or other incumbrance whatsoever, shall yearly, and every year, pay to such person or persons, as shall be appointed by the Commissioners for paving the streets to receive and collect the same, such sum or sums of money, as the said Commissioners and the Assessors of the said city shall assess and settle, as a full compensation to the public, until such porch, cellar-door or step, to him, her or them, respectively belonging, shall be reduced to the limits aforesaid, or such bulk, jut-window, or other incumbrance, shall be removed or taken away; and every owner or owners of any house or houses, whereunto any spout or gutter shall, at the time of the publication hereof, be so fixed and placed, that the waters thereby discharged may incommode persons passing the said streets, shall, and they are hereby enjoined and required forthwith to remove, or effectually to alter and amend the same.

assessed, till  
reduced or  
taken away.

Regulation  
relating to  
signs, &c.

**XLVII.** *And be it further enacted,* That if any person or persons shall hereafter set up or place any sign, sign-post, board, pole or other device or thing whatsoever (except such persons as shall keep a public inn for the entertainment of travellers, with their horses) to denote or shew his, her or their place of residence, or his, her or their occupation or business, or the merchandize or things, which he, she or they hath or have to dispose of, in any of the streets, lanes or alleys of the city of Philadelphia, or which shall extend from his, her or their dwelling into the said streets, lanes or alleys, or if any person or persons (except as before is excepted) to whom any sign, sign-post, board, pole, or other device or thing aforesaid, already set up and placed as aforesaid, shall permit or suffer the same to remain set up and placed in any of the said streets, lanes or alleys, or to extend into the same, after the first day of January next ensuing the publication of this act, every such person or persons, being thereof legally convicted before any Justice of the Peace of the said city, shall forfeit and pay the sum of five pounds, to be paid to the said Commissioners, and by them to be applied to the paving and cleansing the said streets; and the said Commissioners are hereby authorized, empowered and required, to take down and remove all and every such sign, sign-post, board, pole, and other device and thing aforesaid (except as is before excepted) which they shall find so set up and placed in the said streets, lanes or alleys, or extending as aforesaid into the same, after the said first day of January next ensuing. And the said Commissioners are hereby further authorized and empowered to remove, or cause to be removed, all manner of obstructions to the passage through the said streets, which they shall find remaining in the same an unnecessary length of time.

**XLVIII.** *Provided always nevertheless,* That nothing herein contained shall be deemed, taken or construed, to prevent any person or persons to set up or place any such sign, sign-board, pole, or other device or thing aforesaid, against the walls of their several dwellings, so that the same shall not project or extend into the said streets, lanes or alleys, more than six inches.

**XLIX.** *Provided also,* That if any person or persons be sued or prosecuted for any thing done in pursuance of this act, he, she or they may plead the general issue, and give this act, and the special matter in evidence, for their justification; and if the plaintiff or

prosecutor become non-suit, or suffer a discontinuance, or if a verdict pass against him, the defendant shall have treble costs, to be recovered as in cases where costs by law are given to defendants. 1769.

**L.** *And be it further enacted,* That the one half of all fines and forfeitures arising by this act in the city of Philadelphia, not herein before appropriated, shall be paid to the informer, or the person or persons that shall sue for the same; and the other half thereof shall be paid to the Treasurer, appointed by the Commissioners for cleansing and paving the streets of the said city, to be applied towards paving and cleansing the streets of the said city. And that one half of all fines, penalties and forfeitures aforesaid, so as aforesaid incurred for any offences committed out of the said city, shall be paid to the Supervisors of the highways of the respective district or township, where the offence was committed, and applied to the repair of the highways of such district or township; and the other half to the person or persons who shall give information of the offence. Manner of applying the fines.

**II.** *And be it further enacted,* That the act of Assembly passed in the second year of his present Majesty's reign, entitled *An Act for regulating, pitching, paving and cleansing the highways, streets, lanes and alleys, and for regulating, making and amending the water-courses and common sewers within the inhabited and settled parts of the city of Philadelphia, and for raising of money to defray the expenses thereof*;\* one other act of Assembly, passed in the third year of his present Majesty's reign, entitled *A Supplement to the act, entitled An Act for regulating, pitching, paving and cleansing the highways, streets, lanes and alleys, and for regulating, making and amending the water-courses and common sewers, within the inhabited and settled parts of the city of Philadelphia, and for raising of money to defray the expense thereof*;\* one other act of Assembly, passed in the sixth year of his present Majesty's reign, entitled *A Supplement to the act, entitled An Act for the regulating, pitching, paving and cleansing the highways, streets, lanes and alleys of the city of Philadelphia, &c.*† † Chap. 537. one other act of Assembly, passed in the seventh year of his present Majesty's reign, entitled *An Act for amending the act, entitled A Supplement to the act, entitled A supplement to the act, entitled An Act for regulating, pitching, paving and cleansing the highways, streets, lanes and alleys, and for regulating, making and amending the water-courses and common-sewers, within the inhabited and settled parts of the city of Philadelphia, and for raising money to defray the expense thereof*;‡ and one other act, passed in the third year of his present Majesty's reign, entitled *An Act to prevent and remove certain nuisances in and near the city of Philadelphia*;|| and every article, clause and thing, in the said several acts of Assembly contained, shall be, and they are hereby declared to be repealed, null and void, to all intents and purposes whatsoever. (c) Former acts repealed.

Passed 18th February, 1769.—Recorded A. vol. V. page 250.

(c) By an act passed April 5th, 1799, (chap. 2046,) so much of the act in the text, as debars or prevents any person or persons residing within the Northern Liberties, the District of South-

wark, the townships of Moyamensing or Passyunk, or within the city of Philadelphia, holding or possessing lands within the said district or townships, from transporting in his, her or their



waggon, wain or carts, for his, her or their own proper use, any matters or things whatsoever, on or through any of the paved parts of the city, unless the fellyes of the wheels of such waggon or carts be of certain dimensions (see § 32 to 37, ante.) and the loads thereon do not exceed a certain weight, is repealed.

By chap. 735, the powers of the city corporation under this act, were transferred to the Justices of the Peace, the corporation being dissolved in consequence of the revolution; but on the restoration of the corporation by act of March 11th, 1789, (chap. 1383,) all those powers were re-vested, and the provisions contained in the act in the text now principally depend upon an ordinance of the corporation—See particularly the ordinance passed June 3d, 1791, and see sect. 34, 35 and 36, of the incorporating act of March, 1789. And by a supplement to the incorporating act, passed April 2d, 1790, among other things it is enacted, (chap. 1498, sect. 2,) That the Mayor, Recorder, Aldermen and Common Council men, in Common Council assembled, shall have full power and authority, to make, ordain, constitute and establish, such and so many laws, ordinances, regula-

tions and constitutions, as shall be convenient and necessary for the purposes of estimating, assessing, raising and levying of taxes upon the persons of single men, and upon the estates real and personal of the inhabitants of the city of Philadelphia, for the purposes of lighting, watching, watering, pitching, paving and cleansing of the streets, lanes and alleys of the said city, and directing, appointing and regulating the time, order and manner of estimating, assessing, raising, levying and collecting of the said taxes, and of lighting, watching, watering, pitching, paving and cleansing the said streets, lanes and alleys, any law, &c. to the contrary notwithstanding.

And see an act passed March 25th, 1805, (chap. 2569), for the better regulation of the city, &c. The Court of Quarter Sessions empowered to grant views for opening the Streets in the city. All the Streets to be deemed highways, if not less than twenty feet wide. Further powers are given to the corporation with respect to the west end of the Streets extending to the river Schuylkill, &c.

See the general index, titles *Philadelphia*, *Wardens of the Port*, *Health Office*.

# A C T S

OF THE

## General Assembly of Pennsylvania.

Passed at a Session which commenced October 14th, 1769,  
and ended September 30th, 1770.

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JOHN PENN, LIEUTENANT GOVERNOR.

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1770.

### CHAPTER DCII.

*An ACT to enable the owners of meadow lands, on both sides of Gunners' creek, to construct, maintain and keep up a dam and sluices, and to raise a fund to defray the expense thereof.*

Passed 24th February, 1770.—Recorded A. vol. V. page 340.

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### CHAPTER DCIII.

*An ACT for repairing the highway between Frankford bridge and the bridge over Frankford mill-race.*

**WHEREAS** the highway or causeway now in use, between Frankford creek bridge and the bridge over Frankford mill-race, is much out of repair, and dangerous to persons travelling thereon : And whereas it will be too great a burthen on the township, in which the said highway or causeway lies, to amend the same : *Be it therefore enacted*, That the Commissioners and Assessors for the county of Philadelphia, shall and they are hereby enjoined and required, immediately after the passing of this act, and from time to time hereafter, to amend and repair the said highway or causeway, out of the county stock, in such manner as shall be proper and convenient for travellers to pass and repass thereon ; and for that purpose, with the concurrence of the Justices of the Court of Quarter Sessions of the Peace of and for the county of Philadelphia, shall agree with proper workmen.

Passed 24th February, 1770.—Recorded A. vol. V. page 346



1770.

## CHAPTER DCIV.

*A SUPPLEMENT to the act, entitled a supplement to the act, entitled an act for taking lands in execution, for the payment of debts, and for confirming partitions, in several instances heretofore made.*

**WHEREAS** before the passing of the act, to which this act is a supplement, the Sheriff, or other proper officer, who had taken lands in execution, and sold the same for a *bona-fide* consideration had and received, in some cases died, or the term of his office expired by law, before any deed made by him to complete the title of the purchaser, and the said sales yet remain unconfirmed, and such purchasers are left without remedy, in as much as the said last recited act did not make provision for the cases which happened before the time of passing the same: *Be it therefore enacted*, That in all cases where it hath happened, before the passing of the said recited act, that the Sheriff or other proper officer, hath taken any lands, tenements or hereditaments in execution, and either with or without a writ of *venditioni exponas* sold the same, for a *bona-fide* consideration had and received, according to law, and after died, or was removed from his office by the expiration of the term thereof, or otherwise, not having made a deed to the purchaser, it shall and may be lawful to and for the plaintiff or purchaser, his heirs or assigns, to apply to the Supreme Court, or to the county Court of Common Pleas, where the judgment was obtained, and to set forth, by petition, his case to the Court; and thereupon the said Court may, as they shall see cause, and as justice and equity shall require, order and direct the Sheriff, or other proper officer, for the time being, to perfect such title, by executing a deed for the same to the plaintiff or purchaser, his heirs or assigns: and upon such order, obtained as aforesaid, and entered upon the records of the same Court, it shall and may be lawful to and for any Sheriff, or other proper officer, for the time being, according to the direction of the said order, and they are hereby empowered and required, upon payment of such costs and charges as remain unpaid to the former Sheriff, or other proper officer, to make, seal, deliver, execute and acknowledge any deed and deeds, and to perform and do any other matters and things, that by the former Sheriff, or other proper officer, might, could or ought to have been performed or done in or about the premises; which, when done and performed, shall be held and adjudged as valid and effectual in law, as if done and performed by the Sheriff or other officer, who took the said lands, tenements and hereditaments in execution.

Passed 24th February, 1770.—Recorded A. vol. V. page 357. (*d*)

(*d*) See the act, to which this is a supplement, (ante. chap. 510 :) and for a general reference to the acts for taking lands in execution, and regulating Sheriff's deeds, see ante. chap. 152. (*Note to former edition.*) The act in the text is retrospective and of course

obsolete; but as much property may be held under it; and as it has been referred to in judicial decisions, (ante. pa. 66, as establishing the construction of the original acts, it is thought proper to retain it in this edition.)

Mode of  
obtaining  
proper  
deeds, &c.

## CHAPTER DCV.

1770.

*An ACT for the better confirmation of the estates of persons holding or claiming under feme-coverts, and for establishing a mode by which husband and wife may hereafter convey their estates.*

**WHEREAS** it hath been heretofore the custom and usage, ever since the settlement of this province, in transferring the estates of feme-coverts, in many cases, for the husband and wife to execute the deed or conveyance in the presence of witnesses only, and in other cases, after such execution, to acknowledge the same before a Justice of the Peace, or a Justice of the County Court of Common Pleas, or before one of the Judges of the Supreme Court, the said wife being separate and apart from her husband examined, by means whereof a very great number of *bona-fide* purchasers, for a valuable consideration, under such deeds and conveyances, are now become the just and equitable owners and possessors of such estates: And whereas some doubts have arisen, whether the said deeds are sufficiently valid in law to transfer and pass the estate of the wife in and to the lands, tenements and hereditaments, by the said deeds and conveyances intended to be transferred and conveyed, and it is but just and reasonable that the said purchasers should be quieted and secured, and have, hold and enjoy the lands, tenements and hereditaments, intended by the said deeds and conveyances to be transferred and conveyed, according to the true intent and meaning thereof.

*Be it therefore enacted*, That no grant, bargain and sale, lease, release, feoffment, deed, conveyance or assurance whatsoever, heretofore *bona fide* made and executed by husband and wife in manner aforesaid, of any lands, tenements and hereditaments whatsoever, shall be deemed, held or adjudged invalid or defective in law, or avoided or prejudiced; but that all and every the said grants, bargains and sales, releases, feoffments, deeds, conveyances and assurances, shall be, and are hereby declared to be, good and valid in law for transferring and passing the estates, rights, titles and interests of such husband and wife, according to the true intent and meaning of the words thereof; saving to every person and persons, bodies politic and corporate whatsoever (other than to the said husband and wife) their heirs and successors, all such rights, titles, estates, claims and interests, as they, or any of them, have, or ought to have, of, in or to the said lands, tenements and hereditaments.

**II.** And in order to establish a mode, by which husband and wife may hereafter convey the estate of the wife, *Be it enacted*, That where any husband and wife shall hereafter incline to dispose of and convey the estate of the wife, or her right of, in or to any lands, tenements or hereditaments whatsoever, it shall and may be lawful to and for the said husband and wife to make, seal, deliver and execute any grant, bargain and sale, lease, release, feoffment, deed, conveyance or assurance in the law whatsoever, for the lands, tenements and hereditaments, intended to be by them, passed and conveyed. and, after such execution, to appear before one of the Judges of the Supreme Court, or before any Justice of the County Court of Common Pleas of and for the county where such lands, tenements or he-

Grants, &c.  
heretofore  
made, to be  
valid, &c.

Mode by  
which hus-  
band and  
wife may  
convey, &c.



1770. reditaments, shall lie, and to acknowledge the said deed or conveyance; which Judge or Justice shall, and he is hereby authorized and required to take such acknowledgement, in doing whereof he shall examine the wife separate and apart from her husband, and shall read, or otherwise make known, the full contents of such deed or conveyance to the said wife; and if, upon such separate examination, she shall declare that she did voluntarily, and of her own free will and accord, seal, and as her act and deed, deliver the said deed or conveyance, without any coercion or compulsion of her said husband, every such deed or conveyance shall be, and the same is hereby declared to be, good and valid in law, to all intents and purposes, as if the said wife had been sole, and not covert at the time of such sealing and delivery, any law, usage and custom, to the contrary in any wise notwithstanding.

Deeds, &c.  
executed by  
husband  
and wife  
not residing  
in this pro-  
vince, but  
properly  
acknow-  
ledged, to  
be valid.

III. *And be it further enacted*, That all deeds and conveyances made and executed by husband and wife, not residing within this province, and brought hither to be recorded in the county where the lands lie (the acknowledgments thereof being taken and made, in the manner herein before directed, before any Mayor or Chief Magistrate, or officer of the cities, towns or places, where such deeds or conveyances are or shall be made or executed, and certified under the common or public seal of such cities, towns or places) shall be as valid and effectual in law, as if the same had been made and acknowledged, in manner aforesaid, before any Judge of the Supreme Court of this province, or before any Justice of the Court of Common Pleas for the county where the lands lie, any thing herein contained to the contrary notwithstanding.

Passed 24th February, 1770.—Recorded A. vol. V. page 344. (e)

(e) For a general reference to the acts for acknowledging and recording of deeds and adjudications on that subject, see ante. chap. 208.

Before the passing of the act in the text, a deed executed by husband and wife, in the manner here prescribed, was declared to be valid; for such deeds had generally prevailed in the province, and had undergone, from time to time, the notice of the Courts of Justice. *Communis error facit jus!* 1 Dallas 12. The same decision was given, even where there was no separate examination of the wife. 1 Dallas, 17. (*Note to former edition.*)

Under what circumstances a *feme-covert* may give away her real estate, by will, or any instrument in nature of a will, see 2 Dallas, 199, to 204.

The curtesy estate of the husband in the lands of the wife, is not forfeited to the commonwealth for the life of the

husband by his attainder for treason committed in her life-time and after issue born; but the wife's estate is discharged from the curtesy. 1 Binney, 1.

A deed of the wife's land, by the husband and wife, who by a certificate endorsed thereon, appeared before a Judge of the Common Pleas, and "acknowledged the indenture to be their act and deed, and desired the same to be recorded, she being of full age, and by him examined apart," is not sufficient to pass the wife's estate. It must appear by the certificate, at large, that the contents of the deed were made known to the wife, on the separate examination, and that she declared she voluntarily, of her own free will and accord, did seal, and as her act and deed deliver, the said deed or conveyance, without any coercion or compulsion of her said husband. Lessee of *Watson v. Bailey*. 1 Binney, 470.

It has been also held, that a conveyance of the husband's land, by husband and wife, without an acknowledgment by the wife, agreeably to the act in the text, does not impair the wife's right of dower. *Kirk v. Deax*. 2 Binney, §41. 1770.

## CHAPTER DCVI.

*A SUPPLEMENT to the act, entitled An Act to enable the owners, and possessors of a certain tract of marsh and meadow land, therein described, situate in the county of Chester, to keep the banks, dams, sluices and flood-gates in repair, and to raise a fund to defray the expense thereof.* [Chap. 577. ante. pa. 280. See chap. 1414.]

Passed 24th February, 1770.—Recorded A. vol. V. page 358.

## CHAPTER DCX.

*A SUPPLEMENT to the act, entitled An Act for bailing prisoners, and about imprisonment. (f)*

**WHEREAS** it is declared and enacted by the act, to which this act is a supplement, that the public allowance to prisoners shall be two pence *per* day, and no more, and that the respective prisons shall be work-houses, until others are provided for felons, thieves, vagrants, and loose and idle persons: And whereas some doubts have arisen, whether it was the intent and meaning of the Legislature, that the said allowance should be paid to persons committed for criminal offences, after conviction: For the removal of which doubts, *Be it enacted*, That all persons committed for any criminal offence whatsoever shall, during their imprisonment, have and receive three pence *per diem* each; and that the Commissioners of and for each respective county, within this province shall pay the same to the Sheriffs of their respective counties, for the diet and support of such criminals as shall be within their gaols respectively, out of the county stock, which shall from time to time be raised and levied for the payment of the county debts, any usage or custom to the contrary notwithstanding.

Passed 24th February, 1770.—Recorded A. vol. V. page 340.

(f) For the original act, and a general reference to laws respecting prisoners, see ante. chap. 151, pa. 56. (Note to former edition.)

## CHAPTER DCXVI.

*An ACT for the regulation of apprentices within this province.*

**WHEREAS** great mischiefs and losses have been sustained by the masters and mistresses of apprentices, within this province,



1770. for want of some law to regulate their conduct and behaviour during their apprenticeships, to prevent their absenting themselves from their said masters or mistresses service without leave, to punish them for any disorderly or immoral behaviour, and to make the covenants between them mutually obligatory : For remedy whereof, *Be it enacted*, That all and every person or persons, that at any time or times heretofore have been, or after the publication of this act shall be, bound by indenture to serve as an apprentice in any art, mystery, occupation or labour, with the assent of his or her parent, guardian, or next friend, or with the assent of the Overseers of the poor, and approbation of any two Justices, although such persons, or any of them, were or shall be within the age of twenty-one years at the time of making their several indentures, shall be bound to serve the time in their respective indentures contained, so as such time or term of years of such apprentice, if a female, do expire at or before the age of eighteen years, and if a male, at or before the age of twenty-one years, as fully, to all intents and purposes, as if the same apprentices were of full age at the time of making the said indentures, any law, usage or custom to the contrary notwithstanding.

Apprentices to serve the time mentioned in their respective indentures, &c.

Masters, mistresses or apprentices, being aggrieved, method of applying for redress, &c.

II. *And be it further enacted*, That if any master or mistress shall misuse, abuse, or evilly treat, or shall not discharge his or her duty towards his or her apprentice, according to the covenants in the indentures between them made, or if the said apprentice shall abscond or absent him or herself from his or her master's or mistress's service without leave, or shall not do and discharge his or her duty to his or her master or mistress, according to his or her covenants aforesaid, the said master or mistress, or apprentice, being aggrieved in the premises, shall or may apply to any one Justice of the Peace of any county or city, where the said master or mistress shall reside, who, after giving due notice to such master or mistress, or apprentice, if he or she shall neglect or refuse to appear, shall thereupon issue his warrant for bringing him or her, the said master, mistress, or apprentice, before him, and take such order and direction between the said master or mistress and apprentice, as the equity and justice of the case shall require : And if the said Justice shall not be able to settle and accommodate the difference and dispute between the said master or mistress and apprentice, through a want of conformity in the master or mistress, then the said Justice shall take a recognizance of the said master or mistress, and bind him or her over, to appear and answer the complaint of his or her said apprentice, at the next county Court of Quarter Sessions to be held for the said county or city, and take such order, with respect to such apprentice, as to him shall seem just ; and if through want of conformity in the said apprentice, he shall, if the master or mistress, or apprentice, request it, take a recognizance of him or her, with one sufficient surety, for his or her appearance at the said Sessions, and to answer the complaint of his or her said master or mistress, or commit such apprentice, for want of such surety, to the common gaol or workhouse of the said county or city respectively ; and upon such appearance of the parties, and hearing of their respective proofs and allegations, the said court shall, and they are hereby authorised

and empowered, if they see cause, to discharge the said apprentice of and from his or her apprenticeship, and of and from all and every the articles, covenants and agreements, in his or her said indenture contained, the said indenture of his or her said apprenticeship, or any law or custom to the contrary, notwithstanding; but if default shall be found in the said apprentice, then the said Court is hereby authorized and empowered to cause, if they see sufficient occasion, such punishment, by imprisonment, of the body, and confinement at hard labour, to be inflicted on him or her, as to them, in their discretion, they shall think his or her offence or offences shall deserve.

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III. *And be it further enacted*, That if any apprentice of any of the arts, trades, mysteries, occupations or labour aforesaid, shall depart and abscond from his or her master's or mistress's service into any other county of this province, or into the city of Philadelphia, it shall and may be lawful to and for any Justice of the Peace of such county or city to issue his warrant to any Constable within his county or city, to apprehend, take and have the body of such apprentice before him, or some other Justice of his county, and upon such appearance, and hearing of the complaint and defence of the parties, if default be found in the said apprentice, then and in such case, the said Justice of the Peace, before whom such warrant shall be returned, shall commit him or her to the common gaol of the county where his or her said master or mistress shall reside, unless he or she will consent to return home, or shall find sufficient surety to appear at the next Sessions, to be held for the county where such master or mistress shall reside, and answer the complaint of the said master or mistress, and not to depart the same without leave.

Method of proceeding's in case of apprentices absconding.

IV. *And be it further enacted*, That if any person or persons whatsoever shall harbour, conceal or entertain any such apprentice, knowing him to be such, during the space of twenty-four hours, without his or her master's or mistress's consent, and shall not give notice thereof to his or her said master or mistress, every such person or persons, offending in the premises, shall pay to the said master or mistress the sum of twenty shillings, for every day he shall so harbour, conceal or entertain such apprentice, to be recovered in a summary way, as debts under five pounds are by law directed to be recovered, if the same shall not exceed five pounds; if otherwise, to be recovered by action of debt, to be brought at the suit of the party injured, in any Court of Common Pleas within this province.

Penalty on persons harbouring or concealing such apprentices.

V. *Provided always, nevertheless*, That nothing in this act contained shall be deemed, held or understood to repeal, alter or change any article, clause or thing, in the act of General Assembly of this province, entituled *An Act for establishing Orphans Courts*,\* passed in the eleventh year of Queen Anne.

\* Chap. 197.

VI. *And be it further enacted*, That the act, entituled *An Act for the regulation of apprentices within this province*,† passed in the third year of his present Majesty's Reign, and every article, clause and thing, therein contained, shall be, and is hereby declared to be, repealed, null and void.

Former law repealed.  
† Chap. 436.

Passed 29th September 1770.—Recorded A. vol. V. pa. 361. (g)

(g) By chap. 635, the Managers of the House of Employment, or a majority of them, and the Overseers of the poor of the boroughs and townships,



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&c. by the approbation and consent of two or more of the Magistrates of the said city, or two Justices of the Peace of the county, were empowered to put out, as apprentices, all such poor children, whose parents are dead, or are unable to maintain them. (*Note to former edition.*) And see the notes to the act for the regulation of servants, &c. ante. pa. 11.—The 12th section of the act establishing the Orphan's Court, chap. 197, ante. pa. 85—The different local acts for establishing poor houses, referred to under title *Apprentice*, in the General Index to this edition, the 2d section of the act of April 2d, 1803. (post. chap. 2377,) for the confinement of runaway and disorderly apprentices in Phi-

ladelphia, and the case of the *commonwealth v. Keppeler*. 2 Dallas, 197.

By a supplement to the act in the text, passed April 11th, 1799, (chap. 2074.) apprentices who abscond, shall be liable to actions for damages after they come of age; and a mode is prescribed for assigning the indentures, on the death of the master or mistress; or by him or her in his or her life time.

Where an apprentice has not been regularly bound by indenture, his master cannot support debt against the clergyman for marrying him without publication of banns, or consent of such master. *Zieber v. Boos*, Berks, September, 1798. *Nisi Prius*. *Yeates & Smith*, Justices. MSS. Reports.

# A C T S

OF THE

## General Assembly of Pennsylvania.

Passed at a Session which commenced October 14th, 1770,  
and ended March 9th, 1771.

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JOHN PENN, LIEUTENANT GOVERNOR.

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1771.

### CHAPTER DCXX.

*An ACT to prevent the destruction of rock-fish and oysters.*

WHEREAS the catching small rock-fish, and the taking oysters, at improper times, tend to deprive the markets in this province of such supplies of them, as by prudent regulations may be continued: *Be it therefore enacted*, That if any person or persons whatsoever shall, at any time between the first day of March and the first day of December, in any year, after the publication of this act, at any place within this province, offer to sale any rock-fish, which shall not measure twelve inches at least, from the eye to the fork of the tail thereof; or if any person or persons shall, at any time between the tenth day of May and the first day of September, in any year, after the publication hereof, at any place within this province, offer to sale any oysters whatsoever, the person or persons so offending shall forfeit such fish or oysters; and the Clerk of the market, or any Overseer of the poor or Constable in the city of Philadelphia, or any Overseer of the poor or Constable of the borough, district or township respectively, in which any fish or oysters shall be offered to sale contrary to this act, shall, and are hereby required immediately to seize the same, for the use of the poor of such city, borough, district or township.

Rock-fish offered for sale, between the first of March and the first of December, not measuring 12 inches, to be forfeited.

Oysters offered for sale, between the tenth of May and the first of September, to be forfeited.

II. And whereas it has been a practice with some persons, who carry about oysters for sale, to cover such oysters with clams, alleging that they do not offer such oysters for sale, yet dispose thereof contrary to law, falsely pretending to sell clams only: *Be it therefore further enacted*, That if any person or persons shall, at any time between the tenth day of May and the first day of September, as

Clams, &c. offered for sale by any



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person,  
having  
oysters in  
his posses-  
sion at the  
same time,  
to be for-  
feited.

aforesaid, at any place within this province, carry about, or have in his possession at the same time, any oysters, together with clams or other articles, offering such clams or other articles for sale, every such person or persons so offending shall forfeit such clams or other articles, together with such oysters; and the Clerk of the market, or any Overseer of the poor or Constable of the city of Philadelphia, or any Overseer of the poor or Constable of the borough, district or township respectively, in which such clams or other articles shall be so offered to sale, shall immediately seize the same, together with such oysters, for the use of the poor of such city, borough, district or township.

Persons ag-  
grieved  
may ap-  
peal, &c.

III. *Provided always, and be it further enacted*, That if any person or persons shall think him, her or themselves, aggrieved by such seizure as aforesaid, he, she or they may appeal to any Justice of the Peace in and for the city, borough or county, where such seizure shall be made, who is hereby empowered to hear and finally determine the same; and if thereupon it shall be adjudged by such Justice, that the seizure was legally made, the person or persons so appealing, shall further forfeit ten shillings, for the use of the poor of the city, borough, district or township respectively, in which such seizure shall be made.

Former act  
repealed.  
Chap. 535.

IV. *And be it further enacted*, That the act entitled *An Act to prevent the destruction of small rock-fish, and taking of oysters, and bringing them into this province out of season*, passed in the sixth year of his present Majesty's reign, be, and the same is hereby, repealed and made void.

Passed 9th March, 1771.—Recorded A. vol. V. page 403. (h)

(h) By an act passed January 26th, 1802, (chap. 2214,) so much of the act as is therein mentioned, is repealed.

## CHAPTER DCXXI.

*An ACT to regulate the fishery in the river Schuylkill.*

WHEREAS it hath become a common practice to fish in the lower parts of the river Schuylkill with divers seines or nets in the same pool or fishing-place, so that shad and other fish are, in a great measure, prevented from running up the same to the places where they usually spawn, whereby their numbers are too much diminished, and the inhabitants of this province, dwelling near the upper parts of the said river, are deprived of a reasonable proportion of such fish: For remedy whereof, *Be it enacted*, That, from and after the publication of this act, no more than one seine or net shall be cast, drawn or made use of, by any person or persons whatsoever, in any one pool or fishing-place in the said river, within any one term of twenty-four hours, to begin from twelve of the clock at noon, and to continue until the same hour the next day; and that if any person or persons shall cast, draw or make use of, any seine or net, in any pool or fishing place in the said river, or shall be aiding or

Penalty on  
persons u-  
sing more  
than one  
seine or net  
in twenty-  
four hours  
in one pool  
or fishing-  
place, &c.

assisting therein, within the term aforesaid, after any other seine or net has been within that time drawn out of the same, every such person or persons so offending, being thereof convicted before any Justice of the Peace in and for the county, where he or they shall be apprehended (which Justice is hereby authorised and empowered to hear, try and determine the same) shall forfeit the sum of five pounds for every such offence, to be paid to the Overseers of the poor of the township where such offender shall reside, to the use of the poor thereof.

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II. And in order to ascertain what shall be deemed and held to be a pool or fishing-place, within the meaning of this act, *Be it enacted*, That so much of the said river as extends from one side or bank to the other side or bank thereof, and from the place where seines or nets have been usually thrown in to the place where they have been usually taken out shall be deemed and held, and is hereby declared to be, a pool or fishing-place, within the meaning of this act.

What to be deemed a pool or fishing-place.

III. *And be it further enacted*, That where two or more persons residing opposite to each other near the said river, on different sides thereof, may have suitable landing-places on their respective shores, or on an island opposite thereto, for taking seines or nets out of a pool or fishing-place, it shall and may be lawful for such persons respectively to fish with their seines or nets alternately, and not otherwise; that is to say, the person or persons possessing such landing-place as aforesaid, who shall reside near one side of the said river, shall or may fish in such pool or fishing-place, with one seine or net only, for and during the time of twenty-four hours, to be computed as aforesaid; and the person or persons possessing such landing-place, as aforesaid, who shall reside near the other side of the said river, shall or may fish in such pool or fishing-place, with one seine or net only, for and during the time of twenty-four hours, to be computed as aforesaid, next following, and so alternately for the season.

Persons residing opposite to each other, having suitable landings for drawing seines, &c. to fish alternately, &c.

IV. *Provided always nevertheless*, That any person or persons may fish with hoop-nets in the said river, as if this act had never been made.

Hoop-nets not prohibited.

V. *Provided always, and be it further enacted*, That if any person or persons shall cast, draw or make use of, any seine or net for catching fish in the said river, or shall be aiding or assisting therein, between the sun's setting on a Saturday, and the sun's rising on the Monday next following, every such person, being thereof convicted in manner aforesaid, shall forfeit the sum of five pounds, to be paid to the Overseers of the poor of the city, borough, district or township, where such offender shall reside.

Penalty on persons drawing a seine between sunset on Saturday and sunrise on Monday.

VI. *And be it further enacted*, That this act shall continue in force for five years, and from thence to the end of the next sitting of Assembly, and no longer. (i)

Limitation of this act.

Passed 9th March, 1771.—Recorded A. vol. V. page 420.

(i) This act having expired by its own limitation, was revived, chap. 736; and its operation extended as low down the Delaware as Province-Island. It

is to be remarked, however, that by a preceding act of the 6th of April, 1776, (chap. 718,) the act in the text had been continued under the authority of the



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provincial government, for the term of seven years; and a penalty imposed for catching shad in the Schuylkill subsequent to the 20th of May.

For general reference to the acts respecting the river Schuylkill, see ante. chap. 465, pa. 235. (*Note to former edition.*)

### CHAPTER DCXXIII.

*An ACT for regulating the fishery in the rivers Codorus and Conewaga, in York county. (k)*

**WHEREAS** it hath been represented to the Assembly by petition from a number of the freeholders of the county of York, that live on or near the rivers Codorus and Conewaga, that their ancestors, themselves, and the poor adjacent inhabitants, have formerly enjoyed great advantages from the fishery in the same rivers; but that the petitioners and others have, for some time past, been in great measure deprived of this benefit, from divers persons having erected dams across the said rivers, to the almost total obstruction of the fish running up the same: Wherefore, for remedying the mischiefs aforesaid, *Be it enacted*, That all and every person and persons whatsoever, having already erected, or that shall hereafter erect, any mill-dam or other obstruction across the said river Codorus, below the forks thereof, or Conewaga, below the mouth of Bermudian creek, shall make, open and leave the space of five feet in breadth, near the middle of said dam, at least fourteen inches lower than any other part thereof, so that there be at least twelve inches depth of water during the months of March, April and May, in every year, constantly running through the same; and for every foot that the dam is or shall be raised perpendicular from the bottom of the said river, there shall be laid a platform, either of stone or timber, or of both, with proper walls on each side, to confine the waters, which shall extend at least four feet down the stream, and of the breadth aforesaid, to form a slope for the waters gradual descent; and that all and every person and persons, who shall refuse or neglect to make or alter his, her or their dams, in the manner directed as aforesaid, within the term of one year next after this act shall be in force, every such person so offending contrary to the true intent and meaning of this act, being legally convicted thereof, by the oath or affirmation of one or more witnesses, or by his or her own confession, shall forfeit and pay the sum of one hundred pounds, lawful money of this government, for every such offence, or suffer twelve months imprisonment, without bail or main-prize; one moiety of which forfeiture shall be paid to the informer or prosecutor, and the other moiety to the Overseers of the poor of the township where such offender shall reside, for the use of the poor of the said township.

**II.** *And be it further enacted*, That if any person or persons whatsoever, from and after this act shall be in force, shall erect,

Manner of erecting mill-dams below the forks of Codorus, or on Conewaga, below the mouth of Bermudian creek, &c.

(k) So much of this act, as prevented the erecting platforms to certain dams, was suspended till the 5th of March, 1793, (chap. 1478.) (*Note to former edition.*)

build, set up, repair or maintain, or shall be aiding, assisting or abetting, in erecting, building, setting up, repairing or maintaining, any wear, rack, basket, fishing-dam, pound, or other device or obstruction whatsoever, within the said rivers, below the places aforesaid, for the taking of fish; or that shall fix or fasten any net or nets across the same, or any part thereof, whereby the fish may be obstructed from going up the same; or that shall take, destroy or spoil any spawn, fry or brood of fish, of any kind whatsoever, in any such wear, rack, basket, pound, or other device aforesaid, every such person so offending, being thereof legally convicted in manner aforesaid, shall forfeit and pay the sum of fifty pounds, lawful money of this government for every such offence, or suffer six months imprisonment, without bail or main-prize; one moiety of which forfeiture shall be paid to the informer, or person who shall prosecute for the same, the other moiety to the use of the poor of the township where such offender shall reside.

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Penalty on erecting wears, &c.

III. And for the more effectual detecting and punishing offenders against this act, *Be it enacted*, That the Constables of each respective township, which shall be bounded, by or adjoining to any part of the said rivers, shall, and they are hereby enjoined and required, under the penalty of five pounds, to be recovered as debts not exceeding five pounds are directed by law to be recovered, and to be applied in the manner last aforesaid, carefully and diligently, to inspect and view, once at least in every month after this act shall be in force, such parts of the said rivers, as shall be adjoining to his respective township, and having any knowledge of any offence against this act, he shall forthwith give information to the next Justice of the Peace, who shall call such offender before him by warrant or summons, and if, on hearing, he shall appear to be guilty of any offence against this act, the said Justice shall take his recognizance, with one sufficient surety, for his appearance at the next Court of General Quarter Sessions of the Peace to be held for the said county.

Constables to inspect, and give information of offences against this act, &c.

IV. *And be it further enacted*, That after the said dams shall be altered or built agreeable to the true intent and meaning of this act, no person or persons whatsoever shall cast or draw any net or seine in the said rivers, at or within the said opening, or within twenty perches above or below the same, under the penalty of fifty pounds, to be recovered and applied in manner first aforesaid.

Mill-dams, being made agreeable to this act, no person to draw a seine, &c.

V. *Provided always, nevertheless*, That nothing in this act contained shall be construed or understood to deprive or hinder any person from drawing a seine or net, for the taking of fish in any part of the said rivers, except in the places last aforesaid.

Passed 9th March, 1771.—Recorded A, vol. V. page 433.



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## CHAPTER DCXXIV.

*An ACT for appointing Regulators in the southern parts of the Northern Liberties of the city of Philadelphia; and for other purposes therein mentioned. (1)*

See ante.  
chap. 575.  
p. 278.

**WHEREAS** there is a certain tract of land in the township of the Northern Liberties, adjoining to and bounded by the city of Philadelphia, beginning at the northern bounds of the said city, on the river Delaware; thence up the same river, the several courses thereof, to Shackamaxon creek, commonly called Gunner's run; thence up the west side of the same creek to the south line of the lands of the estate of Isaac Norris, deceased; thence by the same tract of land, the several courses thereof, to the road leading from Philadelphia to Frankford; thence down the same road to a stake: thence west to the mustard-mill on the Germantown road, belonging to the estate of William Masters, deceased; thence continuing the same course to the Old York road; thence on the west side of the said road, the several courses thereof, to Peach Grove lane; thence westerly up the said lane to the head thereof; thence continuing the same course to Wissahickon road; thence down the same road, the several courses thereof, to the northern bounds of the said city; thence by the same city to the river Delaware, the place of beginning; through which said tract of land several streets of the said city, running north and south, have legally been extended, and the owners and possessors, by common consent, have opened cross streets, running westward from said river Delaware, and have built and erected thereon, at a very great expense, a large number of houses, messuages, wharffs, stores and other buildings: And whereas great inconveniences have already accrued, for want of Surveyors or Regulators to lay out the proper gutters, channels and conduits, for carrying off the waters, and to set out the lots, and to regulate the walls to be built between party and party, within the limits of the said described tract of land: For remedy whereof, *Be it enacted*, That the Commissioners of the county of Philadelphia shall, and they are hereby required and enjoined to appoint three Surveyors or Regulators of the said streets, who, being first approved of by the Justices of the County Court of Quarter Sessions of the Peace for the said county, shall, upon application made to them, have full power and authority to regulate and lay out the proper gutters, channels and conduits, for the carrying off the waters within the limits of the said described piece of land, and to enter upon the lands of any person or persons in order to set out the foundations, and to regulate the walls to be built between party and party, within the said described piece of land, as to the breadth and thickness thereof, which foundations shall be equally laid upon the lands of the persons between whom such party wall is to be made, and the first builder shall be paid and reimbursed by the builder on the adjoining lot, one moiety or half part of the charge of such party wall, or for so much thereof as the builder on the adjoining lot shall have oc-

Com-  
mis-  
sioners of  
the county  
of Philadel-  
phia to ap-  
point three  
regulators,  
&c.

(1) For the various acts respecting in the index to this edition. (Note to the Northern Liberties, see that title former edition.)

casion to make use of, before he shall in any wise use or break in to the said wall, and that the charge or value thereof shall be set by the said regulators, or any two of them.\*

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\* [1 Dallas, 345.]

II. *And be it further enacted*, That in case of the death, removal or misbehaviour of any of the said Surveyors or Regulators, the said County Commissioners shall, and they are hereby enjoined and required to appoint others in his or their place or places, who, being first approved of by the Justices of the said County Court of Quarter Sessions of the Peace, shall be vested with the same powers and authorities as the Surveyors or Regulators before mentioned.

In case of death or removal, Commissioners to appoint others.

III. *And be it further enacted*, That if any person or persons shall begin to lay the foundation of any party wall, or of any wall fronting on any of the streets within the bounds aforesaid, before the same be viewed and directed by the said Regulators, or any two of them, or shall encroach on the street by such building, or make any gutter, channel or conduit, farther into the street than allowed by the said Regulators, every such person, as well employer as master builder, shall forfeit the sum of five pounds, to be paid to the Supervisors of the highways of the Northern-Liberties, to be laid out in amending and repairing the streets and highways, within the said described tract of land, being of the said offence first convicted in the County Court of Quarter Sessions of the county of Philadelphia aforesaid.

Penalty on persons building party walls, &c. before the same be viewed by the Regulators, &c.

IV. *Provided always, and be it further enacted*, That if either party, between whom such foundation or party wall is to be made, shall conceive themselves aggrieved by any order or direction of the said Regulators, he or they may appeal to the Justices of the next County Court of Common Pleas to be held for the county of Philadelphia, who shall forthwith order a *venire*, directed to the Sheriff of the said county, commanding him to summon a jury for the trial of the matter in dispute, and proceed to determine the same according to the course of the common law.

Persons aggrieved, may appeal, &c.

V. *And be it further enacted*, That the said Regulators or Surveyors attending the said service, for their trouble in setting out and regulating the lines of each lot, shall be paid by the party or parties concerned six shillings each, and no more; and for surveying and regulating any of the said streets or highways, the sum of six shillings each *per diem*, and no more, to be paid out of the monies which shall be raised for repairing and amending the public streets and highways in the said township.

Regulatory allowance for their trouble.

VI. And for the preventing of accidents that may happen by fire within the said described piece of land, *Be it enacted*, That if any person or persons, within the said described piece of land, shall set on fire his or their chimney or chimnies, to cleanse them, or shall suffer the same to be done, or that shall suffer any of them to blaze out at top, and be thereof legally convicted before any Justice of the Peace of the county of Philadelphia, such person or persons shall forfeit and pay the sum of twenty shillings, to the Overseers of the highways of the said township of the Northern-Liberties afore-

Penalty on persons setting their chimnies on fire, &c.



1771. said, to be laid out in amending and repairing the said streets and highways within the said described piece of land.

VII. *Provided always*, That nothing in this act shall be deemed or construed to repeal any matter, clause or thing, in a certain act of assembly, passed in the fifth year of his present Majesty's reign, entitled *An act for opening, and better amending and keeping in repair, the public roads and highways within this province*;<sup>\*</sup> and of one other act of Assembly, passed in the tenth year of his present Majesty's reign, entitled *An act to continue the act, entitled an Act for the opening, and better amending and keeping in repair, the public roads and highways within this province*;<sup>†</sup> but the same, and every part thereof, shall continue and remain in force during the term limited in the said acts, saving in such parts as are hereby altered, changed or supplied.

Passed 9th March, 1771.—Recorded A. vol. V. page 409. (m)

(m) The regulation of a lot by regulators under the act in the text, from which no appeal is entered to the next Common Pleas, is *conclusive* as to the foundations and party walls of buildings erected conformably thereto, but not so as to the lines of the lots on which there are no buildings. 1 Binney, 352.

## CHAPTER DCXXV.

*A SUPPLEMENT to the act, entitled an Act for the better regulation of servants in this province and territories. (n)*

WHEREAS in and by the act of assembly, passed in the twelfth year of the reign of William the third, entitled *An act for the regulation of servants in this province and territories*, full powers are given to the Courts of General Quarter Sessions, in this province, to make restitution to the masters and mistresses of such servants, as shall absent themselves from their service during the term of their servitude, but no clear and express authority is given to the said Courts to order and enforce the delivery and payment of freedom dues to the said servants, at the expiration of their servitude, and such servants are left to their remedy by action of covenant, which is attended with so much expense and trouble, that many servants, after having faithfully discharged their duty and servitude, are discouraged from prosecuting their suits, and thereby deprived of their just dues: For the remedying whereof, *Be it enacted*, That it shall and may be lawful to and for the Justices in the Court of Quarter Sessions for the city of Philadelphia, or any county within this province, on complaint made, by petition presented to them by any servant, who shall have served out his or her time, that his or her last master or mistress, their executors or administrators, have not furnished him or her with freedom dues, and performed the covenants in his or her indentures mentioned, to cause the said master or mistress, their executors or administrators, to

Where freedom dues are withheld by masters or mistresses, &c. manner of obtaining the same &c.

(n) For the original act, and a general reference to the laws respecting servants, apprentices, German emigrants indentured to serve, &c. see ante chap. 49, pa. 11. (Note to former edition.)

come before them, and, after hearing the allegations of the parties and evidences, if it shall appear to them just and reasonable, to adjudge, order and direct delivery or payment of such freedom dues, sums of money, or other things, as shall be justly due to the said servant at the expiration of his or her servitude, according to law, and the covenants in his or her indentures mentioned. And if the said master or mistress, his or her executors or administrators, shall neglect or refuse to comply with such order of the said Justices, in such time as shall be by them appointed, to adjudge the value of such freedom dues, and give judgment, and award execution, with reasonable costs of suit, to be levied by any constable accordingly. And if the said petitioner shall be by the said Justices found to have no just cause of complaint, he or she shall pay all costs, to be recovered and levied in manner aforesaid.

II. And whereas doubts have arisen, whether, by virtue of the act to which this is a supplement, the Justices in their general sessions can, after the expiration of the time of servitude, legally make any order, obliging the person who was a servant, and, during his or her servitude, had quitted the service of his or her master or mistress, further to serve such former master or mistress, as a satisfaction for the damages and charges sustained thereby: To remove the said doubts, and also to provide a just recompence to such master or mistress, his or her executors or administrators, in any case where a servant shall quit his or her service, *Be it enacted*, That if any person, being a servant, shall absent him or herself from the service of his or her master or mistress, without leave first obtained, the Justices aforesaid shall, at their General Quarter Sessions, upon application made to them by the master or mistress, his or her executors or administrators, whether such application be before or after the expiration of such person's time of servitude, oblige such person to make a full recompence for the damages and charges the said Justices shall adjudge to be sustained by such absence, either by serving five days for every day he or she was so absent, or by such other reasonable satisfaction, as to the said Justices shall seem meet.

Servants  
absenting  
from their  
Masters or  
Mistresses  
without  
leave, man-  
ner of ob-  
taining re-  
compence.

III. *And be it further enacted*, That so much of the act of Assembly herein before mentioned, as relates to servants having a new grubbing-hoe, an axe, and a weeding-hoe, at the expiration of their servitude, and so much thereof, as is hereby altered, shall be, and is hereby repealed, and made null and void.

Part of a  
former law  
repealed,  
ante. chap.  
49, pa. 19.

Passed 9th March, 1771.—Recorded A. vol. V. page 426.



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## CHAPTER DCXXVI.

*An ACT declaring the rivers Delaware and Lehigh, and parts of Neshaminy creek, as far up as Barnsley's ford, and of the stream called Lecharwaxin, as far up as the falls thereof, common highways, and for improving the navigation in the said rivers. (o)*

**WHEREAS** the improving the navigation in rivers is of great importance to trade and commerce: And whereas the rivers Delaware and Lehigh may be rendered much more navigable than they now are: And whereas many persons, desirous to promote the public welfare, have subscribed large sums of money for the purposes aforesaid, and it is represented to the Assembly of this province, that more considerable sums would be contributed for the same purposes, if Commissioners were appointed by law to receive such subscriptions, and duly to apply them: *Be it therefore enacted*, That the rivers Delaware and Lehigh, and parts of Neshaminy creek, as far up as Barnsley's ford, and no further, and the stream called Lecharwaxin, as far up as the falls thereof, be, and they are hereby declared to be, common highways, for the purposes of navigation up and down the same.

Bounds of  
the rivers,  
&c. de-  
clared to be  
common  
highways.

Commis-  
sioners ap-  
pointed for  
improving  
the navi-  
gation, &c.

**II.** *And be it further enacted*, That Joseph Galloway, Joseph Fox, Michael Hillegas, Abel James, Samuel Rhoads, James Allen, Peter Knight, Esquires; Daniel Williams, Henry Drinker, Clement Biddle, Jeremiah Warder, the younger, Jacob Bright, John Baldwin, Richard Wells, gentlemen; Thomas Yardley, Adam Hoops, Jacob Orndt, Peter Keckline, Henry Kookan, Esquires; William Ledley, Nicholas Depui, son of Samuel, Jacob Stroud, and John Arbo, gentlemen, be, and they are hereby appointed and constituted Commissioners, for improving the navigation in the said rivers Delaware and Lehigh; who, or a majority of whom, the survivors, or a majority of such survivors, shall have full power and authority, by virtue hereof, to collect, recover and receive, from any person or persons whatsoever, all such sums of money, which have been or shall be given or subscribed for rendering the said rivers more navigable; and so much of the said monies as may be necessary for that purpose to lay out and apply, for and towards improving the navigation in the said river Delaware, from the lower part of the falls near Trenton, to the forks thereof at Easton; and the residue thereof to lay out and apply, for and towards improving the navigation in that part of the said river, called the Eastern or Main Branch; and in the said river Lehigh, in proportion respectively to the sums subscribed by the inhabitants of Pennsylvania and New-Jersey, residing near the said Eastern-Branch, and by the inhabitants of this province, residing near the said river Lehigh: *Provided always*, That such sums of money as have been or shall be given or subscribed, for the improving the navigation in either of the said rivers, above the forks aforesaid, separately, shall be laid out and applied for and towards that purpose and no other.

(o) For all the laws respecting the Delaware, &c. see the proper title in the index to this edition, and chap. 462, ante. pa. 231.

The jurisdiction of the islands in the

Delaware, is regulated, chap. 1024, 1234.

The river Delaware is within admiralty jurisdiction. 1 Dallas, 49. (Note to former edition.)

**III.** *And be it further enacted,* That the said Commissioners, 1771.  
 or a majority of them, their survivors, or a majority of such survivors, shall have full power and authority, by themselves, their agents, servants and workmen, to clear, scour, open, enlarge, straighten or deepen the said rivers, wherever it shall to them appear useful for improving the channels; and also to remove any obstructions whatsoever, either natural or artificial, which may or can in any manner hinder or impede the navigation in the said rivers, or either of them, and to make and set up in the said rivers, or either of them, any dams, pens for water-locks, or any other works whatsoever, and the same to alter or repair, as they shall think fit; and also to appoint, set out and make, near each or either of the said rivers, paths or ways, which shall be free and open for all persons having occasion to use the same, for towing, hauling or drawing any vessels, boats, small craft, and rafts of any kind whatsoever, and from time to time to do and execute every other matter or thing, necessary or convenient for improving the navigation in the said rivers, or either of them. *Provided always,* That no dam, pen, lock or other work, made or set up by the said Commissioners, shall be appropriated to the private use or benefit of any person or persons whatsoever.

Commissioners to have full power to enlarge, straighten or deepen said rivers, &c.

**IV.** *And be it further enacted,* That no person or persons whatsoever shall presume to divert, lead or draw, at any time or times, by any race or other device, any water of the said rivers or either of them, out of or from the natural course or channel for the use of any mill or water-work.

Waters not to be drawn from their natural channels, &c.

**V.** *And be it further enacted,* That if any person or persons shall presume to oppose or hinder the said Commissioners, or any of them, their agents, servants and workmen, or any of them, from doing any act which they are hereby authorized and empowered to do; or shall make, erect, set up, repair or maintain, or shall be aiding, assisting or abetting, in making, erecting, setting up, repairing or maintaining any dam or obstruction, which may or can in any manner hinder or impede the navigation in the said rivers, or either of them; or shall remove, destroy, throw down, alter, injure or impair any dam, pen, lock or other work made or set up by the said Commissioners, or by order of them, or a majority of them, their survivors, or a majority of such survivors, every person so offending, being legally convicted thereof, by verdict of a jury, or by his own confession before the Justices of the Peace in their Court of General Quarter Sessions, shall forfeit and pay fifty pounds, lawful money of this province, for every such offence, or shall suffer imprisonment for twelve months, without bail or main-prize; one moiety of which forfeiture shall be paid to the informer, and the other moiety to the Commissioners herein appointed, or the survivors of them, as aforesaid, to be applied for and towards improving the navigation in the said rivers.

Penalty on persons erecting any dam to impede the navigation;

or destroying any works set up by the Commissioners, &c.

**VI.** And whereas doubts may arise in what counties offences committed in the said river Delaware against this act ought to be tried: For removing thereof, *Be it enacted,* That every offence committed in the said river against this act shall be laid to be committed, and may be tried and determined as aforesaid, in any of the counties

Manner of prosecuting offenders.



1771.

within this province, opposite to or joining on that part of the said river; in which such offence shall be committed.

Mill-dams erected in the river Delaware, before the passing this act, not to be thrown down or impaired, &c.

VII. *Provided always, and be it further enacted*, That nothing herein contained shall give any power or authority to the Commissioners herein appointed, or any of them, to remove, throw down, lower, impair, or in any matter to alter a mill-dam erected by Adam Hoops, Esq. in the said river Delaware, between his plantation and an island in the said river, nearly opposite to Trenton; or any mill-dam erected by any other person or persons in the said river, before the passing of this act, nor to obstruct, or in any manner to hinder the said Adam Hoops, or such other person or persons, his or their heirs and assigns, from maintaining, raising or repairing the said dams respectively, or from taking water out of the said river for the use of the said mills and water-works, erected as aforesaid, and none other.

Commissioners to keep minutes of their proceedings, and make report yearly to the Assembly.

VIII. *And be it further enacted*, That the said Commissioners shall keep minutes of their proceedings, in pursuance of the power hereby given to them, fairly entered in a book, and shall, once in every year, make report of their transactions in improving the navigation in the said rivers, to the Assembly of this province for the time being, and shall lay before them a just and faithful account of all sums of money by them received for the aforesaid purposes, and in what manner they shall be expended, that the same may be adjusted and settled.

Passed 9th March, 1771.—Recorded A. vol. V. page 401.

## CHAPTER DCXXVII.

*An ACT declaring the river Susquehanna, and other streams therein mentioned, public highways, for improving the navigation of the said river and streams, and preserving the fish in the same. (p)*

WHEREAS it is of importance to the trade and commerce of this province, that such rivers and other streams, as are or may be made navigable, be at all times preserved and kept from all manner of obstructions: And whereas the improving the navigation of the rivers Susquehanna, Juniata, and the streams of Conestogoe, Bald Eagle, Machanoy, Penn's creek, and Swatara, Connedoguinet and Kiskiminetas, will greatly conduce to the benefit of the inhabitants residing on and near the said rivers, and the province in general, by increasing the trade of the said province: And whereas it has been represented to the Assembly, that many of the inhabitants residing on or near the said rivers and streams, being desirous to promote the public welfare, are willing to contribute considerable sums of money for the purposes aforesaid, if Commissioners are ap-

(p) New commissioners to be appointed to execute the act in the text, chap. 1144.

index to this edition, and chap. 463, ante. pa. 231.

For the laws respecting the Susquehanna, &c. see the proper title in the

For the act directing the sale of certain islands in the Susquehanna, see chap. 1649. (*Note to former edition*)

pointed by law to take, collect and receive the contributions, and to apply and appropriate the same for and towards clearing and making the said rivers and streams more navigable : Therefore, *Be it enacted*, That the said river Susquehanna, as far down as Wright's ferry ;\* the river Juniata, up to Bedford and Frank's-town ; and the several streams known by the names of Bald Eagle, as far up as Spring creek ; Penn's creek, twenty miles up, on the several courses thereof ; Swatara, as far up as Peter Kettle's mill-dam ; Conestogoe, as far up as Matthias Slough's mill-dam ; Connedoguinet, as far up as the cove fording, which leads to the Forty Shilling Gap ; Machanoy and Kiskiminetas, shall be, and they are hereby declared to be, public streams and highways, for the purposes of navigation up and down the same ; and that all obstructions and impediments to the passage of his Majesty's liege subjects up and down the same, erected, or hereafter to be erected, shall be deemed, held and adjudged common nuisances.

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\* [From the Maryland line upwards, &c. by act of March 31st. 1785 post. chap. 1144.]

Names and bounds of the rivers, &c. declared to be public high-ways, &c.

II. *And be it further enacted*, That James Wright, George Ross, Thomas Minshall, John Loudon, Alexander Lowrey, William M'Clay, Samuel Hunter, the younger, William Patterson, Robert Callender, Charles Steward, Reuben Haines, Thomas Holt, and William Richardson, gentlemen, be, and they are hereby constituted and appointed Commissioners for clearing and making the said rivers Susquehanna, Juniata, Bald-Eagle, Penn's creek, Conestogoe, Connedoguinet, Machanoy, Kiskiminetas and Swatara, navigable ; and that each and every of the said Commissioners shall have full power and authority to take, collect, recover and receive, of and from any person and persons whatsoever, any sum or sums of money which shall be hereafter given, granted or subscribed, for and towards making any of the said respective rivers and streams navigable, and the monies so collected, recovered and received, to lay out, appropriate and employ, for and towards making such of the said rivers and streams navigable, as shall be mentioned or directed by the person or persons giving and granting the same.

Commissioners appointed for clearing and making the same navigable, &c.

III. *And be it further enacted*, That the said Commissioners, or the major part of them, or of the survivors of them, shall have full power and authority, and they are hereby enjoined and required, by themselves, their agents, servants, hirelings and workmen, to remove all obstructions whatsoever now erected, or hereafter to be erected in, and also to scour, enlarge, straiten or deepen the said respective rivers and streams, so as aforesaid committed to their respective care, in any part, place or places thereof, which shall appear to them most convenient for opening, making anew, or improving the channels, and also to cut, blow up, remove or take away all trees, rocks, or beds of gravel, sand or mud, wears, dams, baskets, pounds, stones, or any other impediment or obstruction whatsoever, and to form, make, erect and set up any dams, pens for water-locks, or any other works whatsoever, which they shall think fit and convenient to answer the purpose aforesaid, and to alter, repair or amend the same, as often as it shall be necessary or convenient ; and also to appoint, set out and make tow-paths, or ways for towing, hauling or drawing of boats, vessels, or other small craft, and rafts of any kind whatsoever, in, upon or through the said rivers and streams ; which said paths shall be free and open

Commissioners empowered to remove obstructions, and to enlarge straiten or deepen the said rivers, &c.



1771. to all persons whatsoever, having occasion to use the same; and from time to time, and at all times hereafter, to do, execute and perform all and every other matter or thing in the said rivers and streams, necessary or convenient for making, maintaining, supporting and continuing the navigation in the same.

Penalty on erecting or repairing wears, &c. within the said rivers, &c.

IV. *And be further enacted*, That if any person or persons whatsoever, from and after the publication of this act, shall erect, build, set up, repair or maintain, or shall be aiding, assisting or abetting in erecting, building, setting up, repairing or maintaining any wear, rack, basket, dam, pound, or other device or obstruction whatsoever, within the said rivers or streams, or any of them; or that shall fix or fasten any net or nets across the same, or any part thereof, whereby the fish may be obstructed from going up the said rivers or streams, or that shall take, destroy or spoil any spawn, fry or brood of fish, or any kind of fish whatsoever, in any such wear, rack, dam, basket, pound, or other device aforesaid, every such person so offending, being thereof convicted, by the oath or affirmation of one or more credible witnesses, or by his own confession before any Justice of the Peace of the county where such offence shall be committed (which Justice is hereby authorized and empowered to hear, try and determine the same) shall forfeit and pay the sum of five pounds, lawful money of this government, for every such offence, or suffer three months imprisonment, without bail or mainprize; one moiety of which forfeiture shall be paid to the informer or prosecutor, and the other moiety to the Commissioners for the respective rivers or streams, in which such offence shall be committed, to be applied towards clearing the said respective rivers and streams.

Justices of the Quarter Sessions to issue their warrants to the Supervisors of high-ways for removing wears, &c.

V. And for the more speedy removal of such wears, racks, baskets, dams, pounds, and other devices and obstructions aforesaid, as are already, or hereafter shall be, made in any part of the said rivers and streams, *Be it enacted*, That the Justices of the County Court of Quarter Sessions of the several counties within this province, bounded on and adjoining to any part of the said river and streams, at their next Court of Quarter Sessions after the publication of this act, and as often after as there shall be occasion, and that any of the said Justices of the Peace out of sessions shall, and they are hereby enjoined and required to issue their warrants to the Supervisors of the highways of each and every township next adjacent to the wear, rack, dam, basket, pound, or other device or obstruction aforesaid, so erected, enjoining and requiring them, the said Supervisors respectively, forthwith to remove, or cause to be removed, every such wear, rack, basket, dam, pound, or other device or obstruction aforesaid; and for that purpose to summon the inhabitants of their respective townships, giving them three days notice to repair to, throw down, remove and destroy such wear, rack, basket, dam, pound, or other device or obstruction aforesaid, so erected, built or set up, and to make return of such their proceedings to the said Justices, at their next Court of Quarter Sessions, by whom such warrants shall be respectively issued. And if any such Supervisor or Supervisors of the highways, to whom such warrant shall be directed, shall refuse or neglect to discharge and perform the duty thereby enjoined and required of him or them, he or they so

Penalty on Supervisors neglect or refusal, &c.

offending, and being thereof legally convicted by a jury of the county, or by his or their own confession before the said Justices, in their said Court of Quarter Sessions, shall, for every such offence, forfeit and pay to the Commissioners respectively of the rivers or streams, in which any such device or obstruction shall be erected, the sum of ten pounds, to be applied towards clearing said rivers and streams respectively. And if any inhabitant, so summoned, shall refuse or neglect to attend in person, or to send another able person in his room, to assist in throwing down, removing and destroying such wear, rack, dam, basket, pound, or other device or obstruction aforesaid, so erected, built or set up, in such manner as the said Supervisor or Supervisors shall order and direct, he shall forfeit and pay the sum of ten shillings for every such offence, to the said Commissioners respectively, to be applied towards clearing the said rivers and streams respectively, to be recovered and levied as debts under forty shillings are by law directed to be recovered and levied.

VI. And to prevent any delay that may happen through the default of any of the said Justices, Supervisors of the highways, or persons so summoned, *Be it enacted*, That it shall and may be lawful to and for any person or persons whatsoever to break, throw down, remove and destroy all or any such wear or wears, dams, racks, baskets, pounds, or other device or obstruction whatsoever, built, erected or set up, or to be built, erected or set up, within the aforesaid rivers and streams (except such devices as shall be erected, built and set up by the Commissioners aforesaid) and that every person or persons, who shall assault, hinder or obstruct any person in pulling down, breaking, removing or destroying any of the aforesaid devices or obstructions, in any part of the rivers or streams aforesaid, or any of them, and being thereof legally convicted before any one of the said Justices of the said Courts, shall forfeit and pay, for every such offence to the said respective Commissioners, five pounds lawful money, as aforesaid, one moiety thereof for and towards clearing the respective rivers and streams as aforesaid, and the other moiety to the person or persons assaulted, or obstructed in removing or destroying any of the aforesaid devices or obstructions, to be recovered, by a warrant from any of the said Justices, as debts of five pounds, or under, are recoverable by the laws of this province.

Penalty on persons obstructing the removing of wears, &c.

VII. And for the more effectual detecting and punishing offenders against this act, *Be it enacted*, That the constable of each respective township, which shall be bounded by or adjoin to any part of the said rivers and streams, shall, and he is hereby enjoined and required, under the penalty of five pounds, to be recovered and applied in manner last aforesaid, at some time within two weeks before each County Court, carefully and diligently to inspect and view such parts of the said rivers and streams, as shall be adjoining to his respective township, and having any knowledge of any offences against this act, he shall forthwith give information to some Justice of the Peace, who shall immediately issue his warrant to the Supervisors of the highways aforesaid, for the purposes aforesaid; and the said constable shall also present, on oath or affirmation, every such offence to the Justices of the Court of Quarter Sessions of their

Constable to inspect, and give information of offences against this act, &c.



1771. respective counties, together with the name and names of such offender or offenders, that he or they may be tried, according to the directions of this act; which oath or affirmation the said Justices are hereby required duly and carefully to administer.

Manner of  
prosecuting  
offenders,

VIII. And whereas some doubts may arise, in which of the said counties the offences committed within the said rivers against this act ought to be tried: For removing whereof, *Be it enacted*, That all and every such offence and offences, which shall be committed within the said rivers, or streams or either of them, shall be laid to be committed in any or either of the said counties joining on that part of the said rivers, where such offence shall be committed.

Dams, &c.  
erected by  
the Com-  
missioners,  
for improv-  
ing the na-  
vigation,  
not to be  
moved, &c.

IX. *Provided always nevertheless*, That nothing herein contained shall be held, deemed, taken or construed to prevent, prohibit or obstruct the said Commissioners from making, erecting or setting up any dams, pens for water-locks, or other works or devices, in the said rivers or streams, which they shall think necessary to aid, assist or improve the navigation of the same, or by any means whatsoever to lessen, diminish or destroy the powers and authorities herein before given and invested in them, or to compel or oblige, authorize or empower any Justice or Justices, either in or out of their Sessions as aforesaid, or any Supervisor or Supervisors of the highways, or any other person whatsoever, to pull down, destroy or amove such dams and other devices, as the said Commissioners shall erect or set up in pursuance of this act; but all and every such dams and other devices aforesaid, the said Supervisors, and all other persons whatsoever, are hereby enjoined and required to suffer the same to remain unmoved, any thing herein before to the contrary in any wise notwithstanding.

X. *Provided always*, That no dam, water-lock, or other device, so made, constructed or erected by the said commissioners, shall at any time or times be appropriated to the private use or benefit of any person or persons whatsoever.

Waters not  
to be drawn  
from their  
natural  
channels,  
&c.

XI. *And be it further enacted*, That no person or persons whatsoever shall presume to divert, lead or draw out, at any time or times, by any race or other device whatsoever, any water, or any part of the said rivers or streams, or any of them, from their natural course or channel, for any use or purpose whatsoever.

XII. *Provided also*, That nothing in this act contained shall be deemed or construed to enable the said commissioners to clear the said river Susquehanna of and from the natural obstructions in the same, to the southward of Wright's ferry.

Commis-  
sioners to  
make report  
yearly to  
the assembly.

XIII. *And be it enacted*, That the said Commissioners shall, once in every year, make report of their transactions in clearing, scouring and rendering navigable the said rivers and streams, to the Assembly of this province for the time being, and shall lay before them a faithful and just account of all and every sum and sums of money by them had and received, for the clearing the said rivers and streams, and in what manner the same shall be expended and laid out, that the same may be adjusted, settled and allowed.

Part of a  
former law  
repealed.

XIV. *And be it enacted*, That so much of the act of Assembly, passed in the first year of his present Majesty's reign, entitled *An act for the preservation of the fish in the rivers Delaware, Susque-*

*hanna and Lehigh, commonly called the Western Branch of Delaware, 1771.*  
 as relates to the obstructions in the river Susquehanna, above Wright's ferry, shall be, and is hereby, repealed and made void. Ante. chap. 463.

Passed 9th March, 1771.—Recorded A. vol. V. page 412.

## CHAPTER DCXXVIII.

*An ACT for vacating a part of a road in the township of Passyunk, and for confirming a new road, laid out and made instead thereof.*

WHEREAS, in pursuance of an order of the County Court of Quarter Sessions for the county of Philadelphia, a public road was laid out in the township of Passyunk, from the end of Joseph Sims's lane to the river Schuylkill: And whereas a part of the said road, running on the side of Sepicken creek, down the several courses thereof, from the place of beginning of the road herein after mentioned to the river Schuylkill, and also a private road leading from the same, over the dam across said creek, are found not only injurious to the estate of Henry Elwes, through whose ground the same are laid out, but inconvenient to the public: And whereas the said Henry Elwes, desirous to accommodate the public, hath, by his deed, duly executed by his lawful agents and attornies, conveyed to certain persons, in trust, and for the use of the public, a certain road and piece of ground, containing in breadth fifty-two feet, and extending from the fast land near the side of Sepicken creek; running thence south seventy degrees west fifty-five perches, or thereabout, to a small creek; thence south thirty-three degrees west, to the low water mark of the river Schuylkill, opposite to the wharf lately erected on the Province Island; and therefore it is but reasonable and just that the part of the said road, so laid out by order of the Quarter Sessions, should be vacated, and restored to the said Henry Elwes, and that the said road, so as aforesaid granted for the public use, should be confirmed to them: *Be it therefore enacted*, That so much of the said road, so as aforesaid laid out by order of the said court, as extends on the said several courses and distances along the side of Sepicken creek, and the private road aforesaid, shall be, and the same is hereby, declared to be made null and void; and that instead thereof the said road, so as aforesaid granted by the said Henry Elwes, on the several courses and distances herein before described, shall be for ever hereafter a public road, of the width of fifty-two feet, and maintained and supported as public roads are by law directed to be maintained and supported.

Part of the road laid out by order of Court vacated.  
 New road confirmed.

II. And whereas, in pursuance of the said order of the Quarter Sessions, a private road was also laid out, for the convenience of divers of the inhabitants in the said township of Passyunk, between the lands of Daniel Roberdeau and the said Henry Elwes, into the said road so as aforesaid vacated, and it is necessary that the said private road should be continued, until it shall intersect the said road hereby confirmed: *Be it therefore enacted*, That the said private road shall be continued on the same course on which it was

Private road continued.



1771. originally laid out, until it shall intersect the said road hereby confirmed.

Passed 9th March, 1771.—Recorded A. vol. V. page 429.

## CHAPTER DCXXIX.

*An ACT for erecting a part of the county of Cumberland into a separate county.*

**WHEREAS** a great number of the inhabitants of the western parts of the county of Cumberland have represented to the Assembly of this province the great hardships they lie under, from being so remote from the present seat of judicature, and the public offices : For remedying whereof, *Be it enacted*, That all and singular the lands lying and being within the boundaries following, that is to say ; beginning where the province line crosses the Tuscarora mountain, and running along the summit of that mountain to the Gap near the head of the Path Valley ; thence with a north line to the Juniata ; thence with the Juniata to the mouth of Shaver's-creek ; thence north-east to the line of Berks county ; thence along the Berks county line northwestward to the western bounds of the province ; thence southward, according to the several courses of the western boundary of the province, to the southwest corner of the province ; and from thence eastward with the southern line of the province to the place of beginning ; shall be, and the same is hereby, erected into the county, henceforth to be called **Bedford**.

**II.** *And be it further enacted*, That the inhabitants of the said county of **Bedford** shall, at all times hereafter, have and enjoy all and singular the jurisdictions, powers, rights, liberties and privileges whatsoever, which the inhabitants of any other county, within the said province, do, may or ought to enjoy, by any charter of privileges, or the laws of this province, or by any other ways or means whatsoever, excepting only in the number of Representatives to serve in General Assembly of this province ; in which case it is *provided, and further enacted*, That the freeholders and inhabitants of each township, within the said county, qualified by the laws of this province to elect, shall meet at some convenient place within their respective townships, at the same time the freeholders and inhabitants of the several townships of the other counties shall meet for like purpose, and proceed to choose inspectors ; and that the free-men and inhabitants of the said county, qualified as aforesaid, shall meet at or near the place where the court-house is intended to be built, at the same time the inhabitants of the other counties shall meet for the like purpose, and proceed to elect one Representative or Delegate, to serve them in Assembly, in the same manner, and under the same rules, regulations and penalties, as by the charter and laws of this province are directed in respect to other counties ; which said Representative, when so chosen, shall be a member of the General Assembly of the province of Pennsylvania, and shall sit and act as such, as fully and freely as any of the Representatives for

Boundaries  
of the  
county.

Its name.

Privileges  
granted to  
it.

Freeholders  
to meet,  
and choose  
Inspectors.

One Re-  
presentative  
to be  
elected.

the other counties, within this province, do, may, can or ought to do. 1771.

IV. *And be it further enacted*, That the Justices of the Supreme Court of this province shall have like powers, jurisdictions and authorities, within the said county of Bedford, as by law they are vested with, and entitled to, in the other counties within the province aforesaid; and are hereby authorized and empowered, from time to time, to deliver the gaols of the said county of capital or other offenders, in like manner as they are authorized to do in other the counties aforesaid.

Justices of the Supreme Court to have like powers, &c.

V. *And be it further enacted*, That there shall be a competent number of Justices nominated and authorized by the Governor for the time being, by commissions under the broad seal of the province; which said Justices, or any three of them, shall and may hold Courts of General Quarter Sessions of the Peace and Gaol Delivery, and County Courts for holding of Pleas; and shall have all and singular the powers, rights, jurisdictions and authorities, to all intents and purposes, as other the Justices of Courts of General Quarter Sessions, and Justices of the County Courts for holding of Pleas, in the other counties aforesaid, may, can or ought to have in their respective counties; which said Courts shall, from and after the publication of this act, sit and be held, for the said county of Bedford, on the Tuesday next preceding Cumberland County Courts, in every of the months of January, April, July and October, in every year, at the town of Bedford, until a court-house shall be built; and when the same is built and erected in the county aforesaid, the said several Courts shall then be holden and kept at the said court-house, on the days before mentioned. And the election of a Representative to serve in General Assembly, Assessors, and all other officers of the said county, who are or shall be appointed to be annually elected, shall be made and elected at or near the said court-house, at the same time, and in the same manner, as by the charter of privileges, and the laws of the province aforesaid, are directed to be done in the other counties within this province. And it shall be lawful for the freemen of the said county for the first year, to choose three Commissioners for raising county rates and levies, for the said county.

Courts of Quarter Sessions, &c. to be held.

Time and place of elections.

Passed 9th March, 1771.—Recorded A. vol. V. page 416. (q.)

(q) The sections omitted in this act, are occasional, and all obsolete. The taxes previously laid, to be paid to the treasurer of Cumberland. Trustees appointed for building a Court-house and prison; money to be raised for that purpose. Previous suits to be continued in Cumberland: collector of excise to be appointed, and the boundary lines to be run within a limited time, &c.

Part of Bedford was taken into Northumberland county, by act of March 21st, 1772, (chap. 644.) The county of Westmoreland erected out of Bedford county, February 26th, 1773, (chap. 678.)

Huntingdon county erected out of Bedford, September, 20th, 1787, (chap. 1300,) and Commissioners appointed to run the lines between Bedford, and Huntingdon, March, 2d, 1789, (chap. 1381.)

Somerset taken out of Bedford county, April 17th, 1795, (chap. 1840;) by which the top of the Alleghany mountain from the Maryland line to the Huntingdon line, is made the western boundary of Bedford county: and an additional part, near the Maryland line, is added to Somerset, by act of March 1st, 1800, (chap. 2100.)

The boundaries of Bedford county were ascertained and explained by an



1771.

act of March 21st, 1772, (chap. 658.) And between the counties of Cumberland, Bedford and Northumberland by act of September 30th, 1779, (chap. 837.) But the lines ascertained by this last act, relate, now only to the counties of *Mifflin, Huntingdon and Centre*.

By the Judiciary act, passed February 24th, 1806, (chap. 2634.) *Mifflin, Centre, Huntingdon and Bedford* counties, form the fourth judicial district. The Courts in Bedford are held on the first Mondays in January, April, August and November. The term continues one week.

The county of Bedford is attached to the southern district of the Supreme Court by the act of March 11th, 1809.

By the last enumeration, the county of Bedford contained two thousand eight hundred and fifty one taxables; and with the counties of Somerset and Cambria, five thousand two hundred and six taxables; and by the act apportioning the representation in pursuance thereof, March 21st, 1808, (chap. 2931,) sends two members to the house of representatives, and with the counties of Somerset and Cambria, one member to the Senate.

By the act of September 1785, (chap. 1164,) The county of Bedford was divided into five election districts. This number was of course diminished by the erection of the county of Huntingdon. And by act of September 29th, 1789, (chap. 1445,) the township of *Londonderry* is erected into a separate district, and called the *fourth* district; and the townships of *Air* and *Dublin*, into a separate district, and called the *5th* district.

By act of April 3d, 1792, (chap. 1610,) the fourth district is divided into two districts.

The place of holding the election in the second district, altered April 10th,

1792, (chap. 630,) and in the 5th district, January 24th, 1793, (chap. 640.)

The *seventh* and *eighth* districts erected April 11th, 1793, (chap. 1675.)

The ninth district erected February 5th, 1794, (chap. 1702.)

The tenth district erected, March 13th, 1795, (chap. 1797.)

By act of March 21st, 1797, part of Belfast township is annexed to the fifth district, and the place of holding the elections in said district, fixed, (chap. 1922.)

The place of holding the election in Londonderry township changed Feb'y 23d, 1801, (chap. 2184,) and in the 5th district, Feb'y 13th, 1802, (chap. 2227.)

By reason of the division of Bedford county, and several districts falling into Somerset a new district, erected April 2d, 1802, (chap. 2266,) is called the *eighth* district.

The place of holding elections in Cumberland Valley township, changed April 3d, 1804, (chap. 2507, sect. 2.)

Greenfield township erected into a separate district, April 4th, 1805, (chap. 2599, sect. 11.)

Southampton township erected into a separate district, March 31st, 1806, (chap. 2715, sect. 10.)

Providence township, Dublin township, and Bethel township, erected into three separate districts, April 11th, 1807, (chap. 2856, sect. 8, 9, 10.)

Belfast township made a separate district, and part of Dublin re-annexed to M'Connell's town district, and St. Clair township made a separate district, March 28th, 1808, (chap. 2972, sect. 1, 4, 14.)

The place of holding the elections in Hopewell township changed, April 4th, 1809.

For other matters relating to Bedford county, see title, *Bedford County*, in the General Index.

## CHAPTER DCXXXV.

### *An ACT for the relief of the poor.*

**WHEREAS** the laws hitherto made for the relief of the poor have not answered all the good purposes that were expected from them: *Be it therefore enacted*, That the Mayor or Recorder of the city of Philadelphia, with the Aldermen of said city, or any two of them, and the Justices of the Peace of the respective counties of this province, or any three of them, shall, on the twenty-fifth day of March, yearly and every year, unless the same shall happen on a Sunday, and in such case on the day following, meet at some convenient place within the said city, and in the several

Mayor or Recorder, &c. of Philadelphia, and Justices of the respective counties to meet yearly on the 25th of March, and

1771.

appoint  
Overseers,  
&c.

Overseers  
going out of  
office, to  
return the  
names, &c.

Penalty on  
refusal or  
neglect.

Six days  
notice to be  
given the  
persons to  
be returned  
&c.

Overseers  
to take an  
oath or  
affirmation.

Justices,  
&c. upon  
complaint  
made by  
the Mana-  
gers of the  
House of  
Employ-  
ment that  
money is  
wanting to  
issue their  
warrant to  
the Over-  
seers, for  
laying a rate  
or assess-  
ment, &c.

Penalty on  
their ne-  
glect or  
refusal.

counties respectively, and there nominate and appoint twelve substantial inhabitants of the said city, four of the Northern Liberties, four of the district of Southwark, and two of every borough and other township within their respective jurisdictions, to be Overseers of the poor of the said city, district, boroughs and townships; for which purpose the Overseers going out of office shall, on the day aforesaid, return to the said Magistrates and Justices the names of twelve substantial inhabitants, or more, for the city, four or more for the said district, four or more for the said Liberties, and two or more for each borough and other township, out of which number successors in the said office shall be appointed by the said Magistrates and Justices for the ensuing year. And if any Overseer shall refuse or neglect to make such return as aforesaid, he shall forfeit and pay any sum not exceeding ten pounds. *Provided always,* That the Overseer or Overseers making such return shall give notice thereof in writing, at least six days before the twenty-fifth day of March, to the person or persons, whose name or names are so to be returned, or leave the same at his or their dwelling-house or place of abode. And if any Overseer shall die, fail to make a proper return, remove, or become insolvent, before the expiration of his office, two of the said Aldermen or Justices respectively, on due proof being thereof made before them, may appoint another in his stead.

II. *And be it further enacted,* That every Overseer so nominated and appointed shall, before he enters upon the execution of his office, take an oath or affirmation respectively, according to law, which any Alderman in the said city, or any Justice in the county respectively, is hereby authorized and empowered to administer; *That he will discharge the office of Overseer of the poor truly, faithfully and impartially, to the best of his knowledge and ability.*

III. *And be it further enacted,* That it shall and may be lawful for any two Justices of the Peace for the county, and the Mayor or Recorder and any two Aldermen of the city of Philadelphia, upon complaint made to them by the Managers elected by the Contributors to the relief and employment of the poor in the city of Philadelphia, or by a majority of them, that a sum of money is wanting, or likely so to be, to support and employ the poor in the House of Employment in the said city, to issue their warrant, under their hands and seals, directed to the Overseers of the Poor of the said city, district of Southwark, and townships of Moyamensing, Passyunk, and the Northern Liberties, requiring them forthwith to levy, collect and raise, such and the same rate, by a joint assessment on all estates real and personal, and taxables, in the manner, and under the same penalties, within the said city, district and townships, herein after directed for levying, collecting and raising such rates in the several boroughs and other townships in this province, as to the said Justices, and Mayor or Recorder and Aldermen, shall appear necessary for the purposes aforesaid. And if any of the said Overseers shall neglect or refuse to levy, collect and raise the said rate, so ordered by the said Justices, Mayor or Recorder and Aldermen, and to pay the same, after the charges arising from the reception and removal of their respective poor, and of collecting the said



1771. rate, are deducted, to the Treasurer of the Corporation of Contributors to the relief and employment of the poor in the city of Philadelphia, within two months after the receipt of such order or warrant, every such Overseer, being thereof legally convicted, shall forfeit to the said Corporation the sum of fifty pounds.

Overseers of the poor of the several boroughs and townships, with the approbation of two Justices, to lay a rate or assessment, &c.

The same may be repeated as often as necessary in one year, &c.

Overseers of boroughs, &c. to contract for a house or lodging, for maintaining and employing the poor. &c.

Overseers to be guided by the county assessment, in laying their rates, &c.

IV. *And be it further enacted*, That it shall and may be lawful to and for the Overseers of the poor of the several boroughs and townships within this province (the townships of Moyamensing, Passyunk and the Northern Liberties aforesaid only excepted) having first obtained the approbation of any two Justices of the Peace in the same county, to make and lay a rate or assessment, not exceeding three pence in the pound at one time, upon the clear yearly value of all the real and personal estates within the said boroughs and townships respectively, and six shillings per head on every free-man, not otherwise rated for his estate, in every three penny tax, and so in proportion for any lesser rate or assessment; which said assessments may be repeated, by the authority aforesaid, as often in one year as shall be found necessary for the support of the poor, to be employed in providing proper houses and places, and a convenient stock of hemp, flax, thread, and other ware and stuff, for setting to work such poor persons as apply for relief, and are capable of working, and also for relieving such poor, old, blind, impotent and lame persons and other persons not able to work, within said boroughs and townships respectively, who shall therewith be maintained and provided for.

V. *And be it further enacted*, That it shall and may be lawful to and for the Overseers of the poor of the said boroughs and townships to contract with any person or persons for a house or lodging, for keeping, maintaining and employing, any or all such poor in said boroughs and townships respectively, as shall be adjudged proper objects of relief, and there to keep, maintain and employ all such poor persons, and take the benefit of their work, labour and service, for and towards their maintenance and support; and if any poor person shall refuse to be lodged, kept, maintained and employed in such house or houses, he or she shall be put out of the book, and shall not be entitled to receive relief from the Overseers during such refusal.

VI. *And be it further enacted*, That the Overseers of the said boroughs and townships, in laying the said rates, shall be guided by the county assessment on other occasions, having due regard to every man's estate within the borough or township so to be rated and assessed; and shall enter such rates fairly in a book of which a fair duplicate, signed by them, shall be delivered to the Justices, who shall allow the same, if they find it just and reasonable, without fee or reward, and shall permit any inhabitant to inspect the rates, at all seasonable times, without any fee or reward, and shall give copies, on demand, being paid at the rate of six pence for every twenty-four names; and if any Overseer shall not permit any inhabitant to inspect, or shall refuse to give copies as aforesaid, he shall forfeit twenty shillings to the party grieved, to be recovered as debts under forty shillings are directed by law to be recovered.

**VII.** *And be it further enacted,* That if any person or persons 1771.  
 so rated or assessed in the said city or district, or any borough or township, shall refuse to pay the sum or sums on them charged, it shall and may be lawful to and for the said Overseer or Overseers (having first obtained a warrant, under the hand and seal of any Magistrate of the said city, or any Justice of the Peace of the county respectively, where the said assessment is made, who is hereby empowered to grant such warrant) to levy the same on the goods and chattels of the person or persons so refusing; and in case such person shall not, within three days next after such distress made, pay the sum or sums on him assessed, together with the charge of such distress, that the said Overseer or Overseers may proceed to the sale of the goods distrained, rendering to the owner the overplus, if any, that shall remain on such sale, reasonable charges being first deducted. And in case such person or persons have no goods and chattels, whereby they may be distrained, it shall be lawful for the said Justices, Magistrate or Justice respectively, to commit the offenders to prison, there to remain without bail or main-prize, until they have paid the same. *Provided always,* That if any person or persons shall find him, her or themselves, aggrieved with such rate or assessment, it shall be lawful for the Magistrates or Justices of the Peace, at their next General Quarter Sessions for the city or county respectively, upon petition of the party, to take such order therein, as to them shall be thought convenient, and the same to conclude and bind all parties; and the Overseers shall forbear to proceed in such sale, till the same be determined in the Quarter Sessions.

Persons refusing to pay the sums rated, the same to be levied on their goods and chattels, &c.

Where there are no goods and chattels the offenders to be committed to prison.

Persons aggrieved. Justices at the Quarter Sessions to determine thereon.

**VIII.** *And be it further enacted,* That it shall and may be lawful for the Managers of the House of Employment in the city of Philadelphia, or a majority of them, and the Overseers of the poor of the boroughs and townships aforesaid, by the approbation and consent of two or more Magistrates of the said city, or two Justices of the Peace of the county, to put out as apprentices all such poor children, whose parents are dead, or shall be by the said Magistrates, or Justices and Managers, found unable to maintain them; males to the age of twenty-one, and females to the age of eighteen years.

Managers of the House of employment, &c. to put out poor children as apprentices, &c. See ante. chap. 616. pa. 309.

**IX.** *And be it further enacted,* That no person or persons shall be admitted or entered, in the poor book of the said House of Employment, or of any of the said boroughs or townships, or receive relief, before such person or persons shall have procured an order from two Magistrates, or Justices of the Peace, for the same: And in case the said Managers or Overseers shall enter in their books, or relieve any such poor person or persons, without such order, they shall forfeit all such money or goods, so paid or distributed, unless such entry and relief shall be approved of by two Magistrates or Justices as aforesaid.

No person to be entered in the poor books, without an order from two Magistrates, &c.

**X.** *And be it further enacted,* That the Overseers of the city of Philadelphia, the district of Southwark, and the townships of the Northern Liberties, Moyamensing and Passyunk, shall, on the twenty-fifth day of March in every year, or within six weeks after, render to the Justices of the county of Philadelphia, and to the

Overseers of the city of Philadelphia, &c. to render a just account, in writing, to



1771. **Magistrates** of the said city respectively, or to any three of them, the **Mayor** or **Recorder** being one, a just account in writing fairly entered in a book to be kept for that purpose, and signed by them, of all sums by them received, or rated and not received, and of all money paid by such **Overseers**, and of all other things concerning their office; which accounts, when settled, shall be signed by the said **Justices** or **Magistrates**, who shall have full power to allow such parts thereof only, as to them shall seem just and reasonable. And if any such **Overseer** or **Overseers** shall refuse or neglect to make and yield up such accounts within such time, or if any **Overseer** or **Overseers**, whose office that year expires, shall refuse or neglect to pay all the monies raised by assessments, which shall remain in their hands, after deducting the charges of receiving and removing paupers as aforesaid; and also all other monies, which shall remain in their hands, by fines, forfeitures or donations, to the **Treasurer** of the said **Corporation** of **Contributors**, and deliver up the said books, and every thing in his or their hands concerning the said office, to his or their successor or successors, or shall refuse or neglect to collect and pay to the **Treasurer** all such sums of money, as are uncollected on the rate or assessment at the expiration of his or their office, which they are hereby enabled to collect by warrant under the hand and seal of any one **Magistrate** within the said city, or **Justice** within the said county, respectively, within six weeks after his or their going out of office, it shall and may be lawful to and for the said **Justices** and **Magistrates** respectively, or any three of them, to commit such **Overseer** or **Overseers** to the common gaol, there to remain, without bail or main-prize, till such **Overseer** or **Overseers** shall give such account, and pay and yield up such money, books and other things, as they ought in manner aforesaid.

the Magistrates, &c.

Penalty or Overseers refusing to yield their accounts, and pay all monies remaining in their hands, &c.

Freeholders of every borough and township to meet yearly on the third Saturday in March, and choose three persons to settle and adjust the accounts of the Overseers, &c.

Overseers to make fair entries of the names of all the poor, &c.

**XI.** *And be it further enacted,* That the freeholders of every borough and township in this province (except the townships of the **Northern Liberties**, **Moyamensing** and **Passyunk**) shall meet together on the third Saturday in March yearly and every year, and choose, by tickets in writing, three capable and discreet freeholders, to settle and adjust the accounts of the **Overseers** of the poor of the respective boroughs and townships for the preceding year, and the person who shall have served the office of **Overseer** shall, on the said day, or within fifteen days after, deliver and render to the said freeholders a just account in writing, entered in a book to be kept for that purpose, and signed by him, of all sums by him received, and also of all materials that have come to his hands during his office, or that shall be in his hands, or in the hands of any of the poor, to be wrought, and of the produce of the labour of the poor under his care, and of all money paid by such **Overseers**, and of all other things concerning his office; which accounts, when settled, shall be signed by the said freeholders, or any two of them, who shall have full power to allow such parts thereof only, as to them shall appear just and reasonable. And the said **Overseers** shall make fair entries in a book, of the names of all the poor within their respective boroughs and townships, with the time when each of them became chargeable, and of all certificates delivered to them, and by whom, with the times when the same were delivered; for which

trouble the said freeholders, or any two of them, shall, on settling 1771. their accounts, make such allowances as they shall judge reasonable. And if any of the said Overseers shall refuse or neglect to make and yield up such books and accounts, within the time as aforesaid, or if any such whose office shall expire shall refuse or neglect to pay over the money, and deliver up the books aforesaid, and every other thing in his hands, concerning his said office, to his successors, or shall refuse or neglect to collect and pay to such successors all such sums of money as are uncollected on the rate or assessment at the expiration of his office (which he is hereby empowered to collect by warrant, to be issued under the hand and seal of any one Justice of the Peace in and for his respective county) within thirty days after his going out of office, it shall and may be lawful to and for any Justice of the Peace of the said county to commit such Overseer to the common gaol, there to remain, without bail or main-prize, till such Overseer shall give such accounts, and pay and deliver up such money, books and other things, as he ought in manner aforesaid.

Penalty on their refusing to yield up the books and accounts, &c.

XII. *Provided always nevertheless,* That if any person shall think himself aggrieved by the settlement of his account by the said freeholders, he may, (having first paid over to his successors the balance found in his hands, if any such there be) appeal to the next County Court of Quarter Sessions, who shall, on the petition of the party, take such order therein, and give such relief, as to them shall appear just and reasonable, and the same shall conclude all parties.

Persons aggrieved, may appeal, &c.

XIII. *And be it further enacted,* That the Overseers of the poor of the boroughs and townships within the several counties of this province (except as before is excepted) shall, at least five days before the third Saturday in March, yearly and every year, during the continuance of this act, give public notice in writing, by affixing the same in four or more of the most public places in their respective boroughs and townships, of the place where the inhabitants and freeholders of the several boroughs and townships shall meet, to elect the freeholders aforesaid for each and every of the said boroughs and townships, according to the directions of this act; which place, so appointed for the said election, shall be as near the centre of the respective boroughs and townships, as conveniently may be.

Overseers of boroughs, &c. to give five days notice of the place where the inhabitants are to meet, to elect freeholders, &c.

XIV. *And be it further enacted,* That if any person, appointed as Overseer of the poor of the city of Philadelphia, shall refuse or neglect to take upon him the said office, he shall forfeit twenty pounds to the Overseers of the poor of the said city, for the use of the poor thereof. And if any person, appointed as Overseer of the poor of any borough, township or place, shall refuse or neglect to take upon him the said office, he shall forfeit five pounds to the Overseers of the poor of the said borough, township or place, for the use of the poor thereof; and the said forfeitures shall be levied by warrant from any two Justices of the county, or any two Magistrates of the city of Philadelphia, respectively, under their hands and seals, on the goods and chattels of such person or persons so neglecting or refusing, and sold within three days next after such

Penalty on Overseers refusing to serve, &c.



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In case of the removal or death of any Overseer, all books, papers, &c. to be delivered to other Overseers, &c.

distress made; and if there happen overplus upon sale thereof, the same shall be paid to the owner or owners, reasonable charges being first deducted; and if such person or persons so neglecting or refusing as aforesaid, shall not have goods and chattels, whereby he or they may be distrained as aforesaid, that then the said Justices may commit the offender or offenders to prison, there to remain, without bail or main-prize, till the said forfeitures shall be fully satisfied and paid. And if any Overseer shall remove, he shall, before his removal, deliver over to some other Overseer of the city, borough, township or place, from which he removes, his accounts as aforesaid, with all assessments, books, papers, money and other things concerning his office; and upon the death of any Overseer, his executors or administrators shall, within forty days after his decease, deliver over all things concerning his office to some other Overseer as aforesaid, and shall pay out of the assets all money remaining due, which he received by virtue of his office, before any of his other debts are paid.

Gifts, grants, devises, &c. not exceeding the yearly value of £ 500, to be available in law.

XV. *And be it further enacted*, That all gifts, grants, devises and bequests, hereafter to be made, of any houses, lands, tenements, rents, goods, chattels, sum or sums of money, not exceeding in the whole, including all gifts, grants, devises and bequests, heretofore made, the yearly value of five hundred pounds, to the poor of any borough or township within this province (except the townships as before excepted) or to any other person or persons for their use, by deed, or by the last will and testament of any person or persons, or otherwise howsoever, shall be good and available in law, and shall pass such houses, lands, tenements, rents, goods and chattels, to the Overseers of the poor of such borough or township, for the use of their poor respectively.

Overseers of the poor for the city, and the different boroughs, &c. incorporated.

XVI. *And be it further enacted*, That the said Overseers of the poor for the city, boroughs, district and townships aforesaid, for the time being respectively, shall for ever hereafter, in name and in fact, be, and they are hereby declared to be, bodies politic and corporate in law, to all intents and purposes, and shall have perpetual succession, and by the name of Overseers of the poor of the said city, boroughs, district and townships, may sue and be sued, and plead and be impleaded, in all courts of judicature within this province; and by that name shall and may purchase, take or receive any lands, tenements or hereditaments, goods, chattels, sum or sums of money, not exceeding in the whole, including all gifts, grants, devises, and bequests, heretofore made, the aforesaid yearly value of five hundred pounds, to and for the use and benefit of the poor of the said city, or each of the said boroughs, district or townships respectively, of the gift, alienation or devise of any person or persons whomsoever, to hold to them, the said Overseers, and their successors in the said trust, for the use of the said poor for ever.

What is to be deemed gaining a legal settlement in this province.

XVII. *And be it further enacted*, That if any person, who shall come to inhabit in the said city of Philadelphia, or in any borough, township or place, in this province, shall for himself, and on his own account, execute any public office, being legally placed therein, in the said city, borough, township or place, during one whole year; or if any person shall be charged with and pay his or her share to-



wards the public taxes or levies for the poor of the said city, borough, township or place, for two years successively; or if any person shall really and *bona fide* take a lease of any lands or tenements in the said city, or in a borough, township or place, of the yearly value of ten pounds, and shall dwell in or upon the same for one whole year, and pay the said rent, or shall become seized of any freehold estate in any lands or tenements in the said city or in any borough, township or place, in this province and shall dwell in or upon the same for one whole year; or if any unmarried person, not having children or child, shall be lawfully bound or hired as a servant in the said city or any of the boroughs, townships or places as aforesaid, and shall continue and abide in such service during one whole year; or if any person shall be duly bound an apprentice by indenture, and shall inhabit in the said city, or in any borough, township or place, with his or her master or mistress, for one whole year; such persons, in any of these cases, shall be adjudged and deemed to gain a legal settlement in the said city, borough, township or place respectively, where such person shall so execute an office, be charged with and pay taxes, take such lease, or own any such freehold estate, and dwell thereon, as aforesaid, or being hired or bound, shall continue and inhabit in a place for one whole year, as aforesaid.

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**XVIII.** *And be it further enacted,* That every indentured servant, legally and directly imported from Europe into this province, shall obtain a legal settlement in the city, borough, township or place, in which such servant shall first serve with his or her master or mistress the space of sixty days, and if afterwards such servant shall duly serve in any other place for the space of twelve months, such servant shall obtain a legal settlement in the city, borough, township or place, where such service was last performed, either with his or her first master or mistress; or on an assignment; and all mariners coming into this province, and every other healthy person, directly coming from Europe into this province, shall be legally settled in the city, borough, township or place, in which he or she shall first settle and reside for the space of twelve months.

Manner of  
indentured  
servants  
gaining a  
legal settle-  
ment, &c.

**XIX.** *And be it further enacted,* That every married woman shall be deemed, during coverture, and after her husband's death, to be legally settled in the place where he was last legally settled; but if he shall have no known legal settlement, then she shall be deemed, whether he is living or dead, to be legally settled in the place where she was last legally settled before her marriage.

Legal set-  
tlement  
of married  
women,  
how deter-  
mined.

**XX.** *And be it further enacted,* That if any person or persons, after the publication of this act, shall come out of the city of Philadelphia, or any borough, township or place, into another borough, township or place, within this province, or shall come out of any borough, township or place, in this province, into the city of Philadelphia, there to inhabit and reside, and shall at the same time procure, bring and deliver unto the Overseers of the poor of the city, borough, township or place, where he or she shall come to inhabit, a certificate, under the hands and seals of the Overseers of the poor of the city, borough, township, or place, from whence he, she or they removed, to be attested by two or more credible witnesses, thereby acknowledging the person or persons mentioned in the said

Persons  
removing  
out of the  
city of Phi-  
ladelphia to  
any bo-  
rough,  
township,  
&c.  
or from any  
borough,  
&c. into the  
city, and  
producing a  
certificate,  
how to be  
provided  
for, &c.



1771. certificate to be an inhabitant or inhabitants, legally settled in that city, borough, township or place, every such certificate, having been allowed of and subscribed by one or more Justices of the Peace of the city, or of the county where such borough, township or place, doth lie, shall oblige the said city, borough, township or place, to provide for the persons mentioned in the said certificate, together with his or her family, as inhabitants of that place, whenever he, she or they shall happen to become chargeable to, or be obliged to ask relief of the city, borough, township or place, to which such certificate was given, and into which he, she or they were received by virtue of the said certificate, and then, and not before, it shall and may be lawful for any such person, and his or her children, though born in the city, borough, township or place, and his and her servants or apprentices, not having otherwise acquired a legal settlement there, to be removed, conveyed and settled in the city, borough, township or place, from whence such certificate was brought, and the witnesses who attest the execution of the certificate by the Overseers, or one of the said witnesses, shall make oath or affirmation, according to law, before the Justices who are to allow the same, that such witness or witnesses did see the Overseers of the poor, whose names and seals are thereunto subscribed and set, severally sign and seal the said certificate, and that the names of such witnesses attesting the said certificate are of their own proper hand writing; which said Justices shall also certify that such oath or affirmation was made before them; and every such certificate so allowed, and oath or affirmation of the execution thereof so certified, by the said Justices, shall be taken and received as evidence, without other proof thereof. And no person so coming by certificate into the said city, or any borough, township or place, nor an apprentice or servant to such person, shall be deemed or adjudged, by any act whatsoever, to have gained a legal settlement therein, unless such person shall, after the date of such certificate, execute some public annual office, being legally placed therein in the said city, borough, township or place.

No person coming into any city, &c. without a certificate shall gain a legal settlement therein, except, &c.

**XXI.** *And be it further enacted,* That no person whatsoever, who shall come into any city, borough, township or place, without such certificate as aforesaid (mariners and other healthy persons coming from Europe as aforesaid excepted) shall gain a legal settlement therein, unless such person shall give security, if required, at his or her coming into the same, for indemnifying and discharging the said city, borough, township or place, to be allowed by any one Magistrate or Justice of the Peace respectively.

Complaint being made by the Overseers of the Poor of persons likely to become chargeable, Magistrates to issue their warrant or order for removal, &c.

**XXII.** *And be it further enacted,* That upon complaint being made by the Overseers of the poor of the said city to any one or more of the Magistrates of the said city, or by the Overseers of the poor of any borough, township or place, to one or more of the Justices of the Peace of the county, wherein such borough, township or place is situate, it shall and may be lawful to and for any two Magistrates of the said city, or any two Justices of the said county respectively, where any person or persons is or are likely to become chargeable to the said city, borough, township or place, in which he, she or they shall come to inhabit, by their warrant or order, di-

rected to the said Overseers, to remove and convey such person or persons to the city, borough, township, province or place, where he, she or they was or were last legally settled, unless such person or persons shall give sufficient security to discharge and indemnify the said city, borough, township or place, to which he, she or they is or are likely to become chargeable as aforesaid.

1771.

**XXIII.** *Provided always,* That if any person or persons shall think him, her or themselves, aggrieved by any order of removal made by any of the said Justices or Magistrates, such person or persons may appeal to the Justices of the Peace, at their next General Quarter Sessions of the Peace for the county, from whence such poor persons shall be removed, and not elsewhere, which said court shall determine the same; and if there be any defects of form in such order, the Justices in the said Sessions shall cause the same to be rectified and amended, without any costs to the party; and, after such amendment, shall proceed to hear the truth and merits of the cause; but no such order of removal shall be proceeded upon, unless reasonable notice be given by the Overseers of the city, borough, township or place, appealing, unto the Overseers of the city, borough, township or place, from which the removal shall be, the reasonableness of which notice shall be determined by the Justices, at the Quarter Sessions to which the appeal is made; and if it shall appear to them, that reasonable time of notice was not given, then they shall adjourn the appeal to the next Quarter Sessions, and there determine the same.

Persons aggrieved may appeal to the Justices at the Quarter Sessions, who are to determine, &c.

**XXIV.** *And be it further enacted,* That for the more effectual prevention of vexatious removals and frivolous appeals, the Justices in Sessions, upon any appeal concerning the settlement of any poor person, or upon any proof before them there to be made, of notice of any such appeal to have been given by the proper officer to the Overseers of the said city, or of any borough, township or place (though they did not afterwards prosecute such appeal) shall at the same Sessions order to the party, in whose behalf such appeal shall be determined, or to whom such notice did appear to have been given, such costs and charges, as by the said Justices, in their discretion, shall be thought most reasonable and just, to be paid by the Overseers, or any other person, against whom such appeal shall be determined, or by the person that did give such notice; and if the person ordered to pay such costs and charges shall live out of the jurisdiction of said Court, any Justice where such person shall inhabit shall, on request to him made, and a true copy of the order for the payment of such costs and charges, certified under the hand of the Clerk of the Court, by his warrant, cause the same to be levied by distress; and if no such distress can be had, shall commit such persons to the common gaol, there to remain, without bail or main-prize, until he pays the said costs and charges. And if the said Justices on such appeal shall determine in favour of the appellant, that such poor person was unduly removed, they shall at the same Quarter Sessions order and award to such appellant so much money, as shall appear to the said Justices to have been reasonably paid by the city, borough, township or place, on whose behalf such appeal was made, towards the relief of such poor person, between

Method of proceeding in case of vexatious removals and frivolous appeals, &c.



1771. the time of such undue removal and the determination of such appeal, with the costs aforesaid, the said money so awarded, and the costs to be recovered in the same manner as costs and charges awarded against an appellant are to be recovered by virtue of this act as aforesaid.

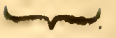
Penalty on  
house-keep-  
ers, &c. en-  
tertaining  
persons, not  
having a le-  
gal settle-  
ment in this  
province,  
&c.

XXV. *And be it further enacted*, That if any house-keeper or inhabitant of this province shall, after the publication of this act, take into, receive or entertain in his or her house or houses, any person or persons whatsoever (all mariners coming into this province, and every other healthy person coming from Europe immediately into the said province, only excepted) not being persons who have gained a legal settlement in some city, borough, township or place, within this province, and shall not give notice in writing, which they are hereby required to do, within three days next after the taking into or entertaining any person or persons in his or her house, within the city of Philadelphia, to the Overseers of the poor of the said city, and within ten days next after taking into or entertaining any person or persons in his or her house, in any borough, township or place, within this province, to the Overseers of the poor of the borough, township or place, where such person dwells, such inhabitant or house-keeper, being thereof legally convicted, by testimony of one credible witness, on oath or affirmation, before any one Magistrate of the said city of Philadelphia, or before any one Justice of the Peace of the county where such person dwells, shall forfeit and pay the sum of twenty shillings for every offence, the one moiety for the use of the poor of the said city, borough, township or place respectively, and the other moiety to the informer, to be levied on the goods and chattels of the delinquents, in the manner herein after directed; and for want of sufficient distress, the offender to be committed to the work-house of the said city or county, there to remain, without bail or mainprize, for the space of ten days: And moreover, in case the person or persons so entertained or concealed shall become poor, and unable to maintain him or herself, and cannot be removed to the place of his or her last legal settlement in any other province, if any such he or she hath, or shall happen to die, and not have wherewithal to defray the charges of his or her funeral, then, and in such case, the house-keeper or person convicted of entertaining or concealing such poor person, against the tenor of this act, shall be obliged to provide for and maintain such poor and indigent person or persons, and, in case of such poor person's death, shall pay the Overseers of the poor so much money, as shall be expended on the burying of such poor and indigent person or persons; and upon refusal so to do, it shall be lawful for the Overseers of the poor of the said city, borough, township or place respectively, and they are hereby required to assess a sum of money on the person or persons so convicted, from time to time, by a weekly assessment, for maintaining such poor and indigent person or persons, or assess a sum of money for defraying the charges of such poor person's funeral, as the case may be: And in case the party convicted shall refuse to pay the sum of money so assessed or charged to the Overseers of the poor, for the uses aforesaid, the same shall be levied on the goods and chattels of the offender, in the manner herein after directed; but if such persons, so convicted, have no goods or



chattels to satisfy the money so assessed for him or her to pay, that then it shall and may be lawful for the said Magistrates or Justices to commit the offender to prison, there to remain, without bail or main-prize, until he or she hath paid the same, or until he or she shall be discharged by due order of law.

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**XXVI.** *And be it further enacted,* That if any person be removed by virtue of this act, from one county, city, borough, township or place, to another, by warrant or order, under the hands and seals of two Justices of the Peace or Magistrates as aforesaid, the Overseers of the poor of the city, borough, township or place, to which the said person shall be so removed, are hereby required to receive the said person; and if any of the said Overseers shall refuse or neglect so to do, he or they so offending; upon proof thereof by one or more credible witnesses, upon oath or affirmation, before any one of the Magistrates or Justices of the Peace of the city or county where the offender doth reside, shall forfeit, for every such offence, the sum of five pounds, to the use of the poor of the city, borough, township or place, from which such person was removed, to be levied by distress and sale of the offender's goods, by warrant under the hand and seal of the said Magistrate or Justice of the Peace, which he is hereby required and empowered to make, directed to the constable of the city, borough, township or place, where such offender or offenders dwell, returning the overplus, if any be, to the owner or owners; and for want of sufficient distress, then the offender to be committed to the gaol of the county where he dwells, there to remain, without bail or main-prize, for the space of forty days.

Penalty on Overseers not receiving persons removed by warrants, &c.

**XXVII.** And whereas it often happens that poor persons, sometimes with certificates, and sometimes without, come from the city of Philadelphia into some township or place within this province, and from some place or township of this province into the said city of Philadelphia, or into some other township of this province, and conceal themselves until they become sick or lame, and cannot be removed, or die before they can be removed; by reason whereof the inhabitants of the city, borough, township or place, where such poor person or persons fell sick, or died, are put to charges, without any means to relieve themselves from the payment of the monies expended for the maintenance or burying of such poor person or persons: *Be it therefore enacted,* That if any poor person or persons shall come out of the city of Philadelphia into any borough, township or place, within this province, or shall come out of any borough, township or place, within this province, into the city of Philadelphia, or any other township or place, within this province, and shall happen to fall sick, or die, before he or she have gained a legal settlement in the city, borough, township or place, to which he or she shall come, so that such person or persons cannot be removed, the Overseers of the poor of the city, borough, township or place, into which such person or persons is or are come, or one of them, shall, as soon as conveniently may be, give notice to the Overseers of the poor of the city, borough, township or place, where such person or persons had last gained a legal settlement, or to one of them, of the name, circumstances and condition of such person or persons; and if the Overseers of the poor, to whom such notice

Poor persons coming from the city of Philadelphia into any borough, &c. or from thence into the said city and fall sick, or die, Overseers to give notice to those where such persons last gained a legal settlement, &c.



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Method of  
proceeding,  
in case they  
refuse to re-  
imburse the  
expenses,  
&c.

shall be given, shall neglect or refuse to pay the monies expended for the use of such poor person or persons, and to take order for relieving and maintaining such poor person or persons, or in case of his, her or their death, before notice can be given as aforesaid, shall, on request being made, neglect or refuse to pay the monies expended in maintaining and burying such poor person or persons, then, and in every such case, it shall be lawful for any two Justices of the Peace of the city or county where such poor person or persons were last legally settled, and they are hereby authorized and required, upon complaint made to them, to cause all such sums of money, as were necessarily expended for the maintenance of such poor person or persons, during the whole time of his, her or their sickness, and in case he, she or they die, for his, her or their burial, by warrant under their hands and seals, to be directed to some Constable of the city or county respectively, to be levied by distress and sale of the goods and chattels of the said Overseer or Overseers of the poor, so neglecting or refusing, to be paid to the Overseer or Overseers of the city, borough, township or place, where such poor person or persons happened to be sick, or to die as aforesaid, and the overplus of the monies arising by sale of such goods, remaining in the Constable's hands after the sum of money ordered to be paid, together with the costs of distress, are satisfied, shall be restored to the owner or owners of the said goods.

Overseers  
being ag-  
grieved,  
may appeal,  
&c.

**XXVIII.** *Provided always,* That if any of the said Overseers shall think him or themselves aggrieved by any sentence of such Justices, or by their refusal to make any order, as is aforesaid, he or they may appeal to the Justices of the Peace, at their next court of Quarter Sessions for the county where such Justices reside, and not elsewhere, who are hereby authorized and required to hear, and finally to determine the same.

Rather and  
grand-  
father,  
&c. of poor  
impotent  
persons, be-  
ing of suffi-  
cient ability,  
to maintain  
them, &c.

**XXIX.** *And be it further enacted,* That the father and grand-father, and the mother and grand-mother, and the children of every poor, old, blind, lame and impotent person, or other poor person not able to work, being of sufficient ability, shall, at their own charge relieve and maintain every such poor person, as the Magistrates or the Justices of the Peace, at their next General Quarter Sessions for the city or county where such poor persons reside, shall order and direct, on pain of forfeiting forty shillings for every month they shall fail therein.

Method of  
proceeding,  
in case fa-  
ther or mo-  
ther desert  
their chil-  
dren, and  
leave them  
chargeable,  
&c.  
ante chap.  
229, pa. 100.

**XXX.** And whereas it sometimes happens that men separate themselves, without reasonable cause, from their wives, and desert their children, and women also desert their children, leaving them a charge upon the said city, or upon some borough, township or place aforesaid, although such persons may have estates, which should contribute to the maintenance of such wives or children: *Be it therefore enacted,* That it shall and may be lawful for the Overseers of the poor of the said city, having first obtained a warrant or order from two Magistrates of the said city, or for the Overseers of any borough, township or place, where such wife or children shall be so left, or where such wife or children shall be so neglected, having first obtained a warrant or order of any two Justices of the Peace of the county, to take and seize so much of the goods and chattels,

and receive so much of the annual rents and profits of the lands and tenements of such husband, father or mother, as such two Magistrates or Justices shall order and direct, for providing for such wife, and for maintaining and bringing up such child or children; which warrant or order being confirmed at the next Quarter Sessions for the city or county respectively, it shall and may be lawful for the Justices there to make an order for the Overseers to dispose of such goods and chattels, by sale or otherwise, or so much of them, for the purposes aforesaid, as the court shall think fit, and to receive the rents and profits, or so much of them as shall be ordered by the said Sessions, of his or her lands and tenements, for the purposes aforesaid; and if no estate, real or personal, of such husband, father or mother, can be found, wherewith provision may be made as aforesaid, it shall and may be lawful to and for the said Justices, in their Court of Quarter Sessions for the city or county respectively, to order the payment of such sums, as they shall think reasonable for the maintenance of any wife or children so neglected, and commit such husband, father or mother, to the common gaol, there to remain, until he or she comply with the said order, give security for the performance thereof, or be otherwise discharged by the said Justices; and on complaint made to any Magistrate of the city of Philadelphia, or to any Justice of the Peace in any county, of any wife or children being so neglected, such Magistrate or Justice shall take security from the husband, father or mother, neglecting as aforesaid, for his or her appearance at the next General Quarter Sessions, there to abide the determination of the said Court, and for want of security, to commit such persons.

1771.

Post. chap.  
2357. §. 30.

XXXI. *And be it further enacted*, That the several fines, forfeitures and penalties, sum and sums of money, imposed or directed to be paid by this act, and not herein otherwise directed to be recovered, the same, and every of them, shall be levied and recovered by distress and sale of the goods and chattels of the delinquent or offender, by warrant, under the hands and seals of one or more of the Aldermen of the city of Philadelphia, for the said city, and under the hand and seal of any one Justice of the county, where the delinquent or offender dwells, or is to be found; and after satisfaction made of the respective forfeitures, fines, penalties and sums of money, directed to be levied by such warrant as aforesaid, together with such legal charges as shall become due on the recovery thereof, the overplus, if any, to be returned to the owner or owners of such goods and chattels, his or her executors or administrators.

Manner of  
recovering  
fines, &c.

XXXII. *Provided always*, That if any person or persons shall find him or themselves aggrieved with any judgment of the Justices, given out of their Sessions, in pursuance of this act, such person or persons may appeal to the next General Quarter Sessions of the Peace for the county or city, where sentence was given (except in cases of removals, and cases of poor persons becoming chargeable in one place, who are legally settled in another, as is otherwise provided for by this act) whose decision in all such cases shall be conclusive.

Persons ag-  
grieved,  
may appeal  
&c.

XXXIII. *And be it further enacted*, That if any action shall be brought against any Overseer, or other person, who in his aid, and

Overseers  
&c. sued,  
for any



1771.

thing done  
by direction  
of this act,  
may plead  
the general  
issue.

Former  
laws relat-  
ing to the  
poor repeal-  
ed.

\* Chap. 154.

† Chap. 237.

‡ Chap. 336.

§ Chap. 379.

by his command, shall do any thing concerning his office, he may plead the general issue, and give this act, and any special matter, in evidence; and if the plaintiff shall fail in his action, discontinue the same, or become non-suit, he shall pay double costs.

XXXIV. *And be it further enacted*, That an act of the General Assembly of this province, entitled *An Act for the relief of the poor*;\* and another act, entitled *An Act for supplying some defects in the law for the relief of the poor*;† and another act, entitled *A Supplement to the several acts of Assembly of this province for the relief of the poor*;‡ and another act, entitled *An Act for amending the laws relating to the poor*,§ be, and are hereby repealed, annulled, and made void.

Nothing in  
this act to  
abridge the  
powers of the  
Overseers  
till the twen-  
ty-fifth of  
March next.

[Obsolete.]

Part of a for-  
mer law re-  
pealed.

\* Chap.  
534. now  
wholly re-  
pealed and  
supplied, by  
act of March  
29th 1803.  
chap. 2357.

Limitation.  
But now  
made per-  
petual, chap.  
719. 951. sect.  
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[XXXV. *Provided always, and be it further enacted*, That nothing in this act contained shall be deemed or construed to extend to abridge, alter or change the powers and duties of the present respective Overseers of the poor, in any city, borough, township or place, within this province; but that they, the said Overseers of the poor, shall continue to hold, exercise, do and perform the respective duties to their offices belonging, until the twenty-fifth day of March next, as fully and amply, to all intents and purposes, as if this act had not been made, any thing herein contained to the contrary notwithstanding.]

XXXVI. *And be it further enacted*, That so much of the act of Assembly, passed in the sixth year of his present Majesty's reign, entitled *an Act for the better employment, relief and support of the poor, within the city of Philadelphia, the district of Southwark, the townships of Moyamensing and Passyunk, and the Northern-Liberties*,\* as relates to the applying the monies which shall be raised in the said city, district and townships, for the maintenance, support and employment of their respective poor, or is otherwise hereby altered or supplied, shall be, and is hereby declared to be, repealed, null and void.

XXXVII. *And be it further enacted*, That this act shall continue in force for the space of five years, and from thence to the end of the next sitting of assembly, and no longer.

Passed 9th March, 1771.—Recorded A. vol. V. page 367. (r)

(r) The act in the text, having been limited to five years, was made perpetual, by an act passed April 6th, 1776, (chap. 719.) But that act being passed under the provincial government, it was deemed necessary to pass the act of March 24th, 1778, (chap. 781,) to revive and put in force "An act for the relief of the poor." But both the acts, of 1776 and 1778, are superseded and supplied by the tenth section of an act passed March 25th, 1782, (chap. 951,) which revives, re-enacts, and perpetuates the act in the text, and also repeals so much of the act of February 8th, 1766, (now wholly repealed) as incorporates the township of Passyunk with the city of Philadelphia, the district of Southwark, and the township of Moyamen-

sing and Northern Liberties. But the whole of chap. 951, except the tenth and twelfth section; so much of the act in the text as relates to the city and liberties; and all other acts relating to the poor of the city of Philadelphia, the district of Southwark and the township of the Northern Liberties, are repealed and supplied by an act passed March 29th, 1803, (post. chap. 2357,) entitled "An act for the consolidation and amendment of the laws, as far as they respect the poor of the city of Philadelphia, the district of Southwark, and the township of the Northern Liberties."

The consolidating act prescribes the time, places and manner of appointing Guardians of the poor, and the number of them, for the city, district, and town-



ship. Notice to be given to the persons chosen, within two days after their appointment. After the appointment of managers, the remaining number of Guardians to be divided by lot into two classes, and successors to be elected for one year, one half on the third Monday in May, and one half on the third Monday in November, annually. Vacancies by death or removal to be supplied within two days after information thereof. Guardians to take an oath or affirmation (prescribed) before they enter on the duties of their office; and penalty for neglecting or refusing thereof. None but citizens to be Guardians.—Created a corporation, by the name of “The Guardians of the poor of the city of Philadelphia, the district of Southwark and the township of the Northern Liberties.” Eight Managers of the house of employment to be appointed by the Guardians, four of which to be from the city, two from Southwark, and two from the Northern Liberties, to be divided into classes, one half to be chosen in May, and the other half in November annually, so that four are appointed every six months. Vacancies to be supplied from the body of Guardians, for the unexpired time of the Manager whose place is vacant. Their duties prescribed—their books to be kept open for the inspection of the Guardians, and while in office to be exempted from all other duties of Guardians, and from serving on juries. The remaining Guardians also exempted from serving on juries. The Managers to take an oath, &c.

The Managers empowered, under certain conditions, to lay an assessment, not exceeding a given amount,—the manner of proceeding therein—to appoint collectors of the poor tax, who shall reside within the proper district, and shall give bond, &c. the powers and duties of the collectors prescribed.

A Treasurer to be annually appointed by the Managers and Guardians out of their own body—his duties prescribed—to give bond, &c.

The Guardians shall appoint a clerk, removeable at pleasure, who shall give bond, &c.

The act then proceeds, to empower the Guardians to afford relief in case of emergency, &c. and the Managers to put out poor children as apprentices—to bind out disorderly persons for a limited time—to direct who shall be admitted on the poor books, &c. What shall be deemed a legal settlement—how indented servants shall gain a legal settlement—the place of settlement of married women.—Persons removing, &c. to produce certificates.—Proceedings when poor are likely to become chargeable—with appeal to the Sessions.—

vexatious removals and frivolous appeals provided against. Measures to be taken to remove old persons, infants, maimed, &c. or to indemnify the city against their becoming chargeable, with like appeal. Penalty on house keepers, &c. entertaining persons not having a legal settlement.

Penalty on the guardians, or overseers of the poor, for not receiving persons removed by warrant or order, &c.

Poor persons removing from the city, &c. or thence from any other place, and falling sick or dying. The guardians, or overseers to give notice to those where such persons last gained a legal settlement, &c. and the method of proceeding in case of refusal to reimburse the expences, &c. Appeal therein to the Sessions. The mode of proceeding to obtain a reimbursement of expenses in affording temporary relief to persons not having a legal settlement within the city, &c.

Negroes and mulattoes shall be deemed to be settled, where registered, if slaves; and if free, in the township or place where liberated; if set free after attaining 28 years of age, to be maintained by the former master or mistress, if chargeable, &c.

The father, grandfather, mother, grandmother, children and grandchildren, of poor and impotent persons, shall maintain them, if of sufficient ability.

Proceedings where husbands desert their wives, or parents their children, leaving them chargeable, &c.

How fines are to be recovered, with appeal to the Sessions.

The managers are empowered to make bye-laws, &c. for the government of the paupers, &c.

Guardians or overseers, sued for any thing done by direction of this act to plead the general issue, and give the act in evidence, &c.

Auditors to be appointed annually to settle the accounts of the treasurer, guardians and managers.

By a supplement to this act, passed April 1st, 1805, (post. chap. 2585.) All monies collected for the use of the poor of the city, &c. shall be under the control of the guardians, &c. the mode of filling vacancies in the board of Guardians is more particularly prescribed; and when the Board of Guardians shall deem it expedient to erect additional buildings, how they are to proceed.

From the foregoing summary, it will be seen, there are certain provisions not confined merely to the City and Liberties, but which affect the state at large; particularly those sections which relate to removals and certificates, and



1771. temporary supplies to persons not settled, and expenses of such persons suddenly dying, or falling sick.

The township of Moyamensing was separated from the City and Liberties, so far as respected the poor, under the act of Feb'y 8th, 1766, (now repealed) by an act passed April 9th, 1791, (chap. 1547.)

By an act passed March 24th, 1809, the commissioners of the Northern Liberties are to choose guardians of the poor at the town-house, &c.

An important act was passed April 3d, 1794, (chap. 1715,) in these words.

"The Justices of the peace, and Judges of the several Courts within this commonwealth are hereby authorized to admit, in all cases respecting the settlement of paupers, the testimony of every otherwise legal witness, notwithstanding he, she or they, may be inhabitants of the city, district, borough, township or townships concerned."

In the county of Dauphin, by act of February 22d, 1808 (chap. 2909,) there is a provision still more extensive: "That in all actions to be commenced by the directors of the poor of the county of Dauphin, for the recovery of any gift, grant, fine, forfeiture, devise or bequest made to the said corporation, or in case of any appeal brought by or against the said directors, respecting the settlement of a pauper, each and every person resident in said county in the first case, and of the counties affected thereby in the second case, shall be competent to hear, try, and give testimony touching the matters in controversy.

By the second section of an act passed March 24th, 1803, (chap. 2346,) it is enacted, "That if the last legal place of settlement of any person or persons, under the poor laws of this commonwealth, now is or hereafter shall be in any township divided, and such person or persons shall become chargeable after the division thereof, he she or they shall be supported by that township within the territory of which he, she or they resided at the time of gaining the settlement."

By an act, entitled "An act to empower the Overseers and Guardians of the poor of the several townships of this commonwealth, to recover certain fines, penalties and forfeitures, and for other purposes;" passed April 4th, 1803, (chap. 2387,) it is made the duty of Justices of the peace receiving fines, &c. appropriated to the use of the poor, to make an entry thereof on his docket, and forthwith deliver a transcript thereof to some constable, who shall, under a certain penalty, within twenty days

thereafter, deliver such transcript to one of the Overseers of the poor of the township to which the forfeiture belongs. And the Justice, within two weeks after the receipt of the money, if demanded, shall pay over the same to the Overseers of the poor lawfully entitled thereto, and annually, if required, exhibit his docket to the persons appointed to settle the accounts, &c.

The Justice wilfully neglecting, or refusing to perform such duties, shall be liable to indictment, and on conviction, be deemed guilty of misbehaviour in office, and be fined twenty dollars, &c. and for refusing or neglecting to pay over the money, shall be fined, moreover, double the sum received, to be paid to the proper Overseers.

Overseers, by action of debt or case, before another Justice, or in Court according to the amount, may recover such fines, &c. in the hands of Justices.

Sheriffs, who have received fines imposed on persons refusing to serve the office of constable, shall pay the same to the Overseers, and give notice, &c. as is directed, and under the same penalties, as in the case of Justices.

In case of fines imposed on persons refusing to serve as constables, the clerk of the Court shall give notice thereof, by the constable to the proper overseers.

The Supervisors of the highways in Chester and Lancaster counties, are invested with the powers of the Overseers in other counties, and the monies are to be paid to such supervisors, to repair the highways.

The foregoing provisions are extended to the city and suburbs of Philadelphia, &c. And by a supplement, passed Feb'y 20th, 1804, (post. chap. 2422,) all fines paid into the hands of the Overseers of the poor, where there are no poor, or where any surplus remains, shall, under certain penalties, be paid over by the Overseers to the Supervisors of the highways for the repair of the roads, unless the township auditors shall judge it necessary to retain the whole or a part for the use of the poor.

Numerous acts have been passed for the erection of poor houses in the different counties. In each of these, the office of Overseers of the poor is abolished, and directors of the poor elected by the people. The following acts will therefore complete the view of the system relating to the poor in Pennsylvania.

An act to provide for the erection of houses for the employment and support of the poor in the counties of Chester and Lancaster, Feb'y. 27th, 1798, (chap.



1960.) Supplements thereto, Feb'y. 9th, 1799, (chap. 206,) empowered to bind out apprentices, Jan'y. 30th, 1804, (chap. 2405.) March 31st, 1807, (chap. 2785.)

An act to provide for the erection of a house for the employment and support of the poor in the county of York, Feb'y. 6th, 1804, (chap. 2413.) The Supplements to this act, 2580, 2583 and 2743, are obsolete.

An act to provide for the erection of a house for the employment and support of the poor in the county of Delaware, Feb'y. 13th, 1804, (chap. 2419.) Supplement thereto, March 31st, 1807, (chap. 2785.)

An act to provide for the erection of a house for the employment and support of the poor in the county of Montgomery, March 10th, 1806, (chap. 2656.) Supplement thereto, Jan'y. 26th, 1807, (chap. 2732,) obsolete.

An act to provide for the erection of a house for the employment and support of the poor in the county of Dauphin, March 28th, 1806, (chap. 2701.) Supplements thereto, March 4th, 1807, (chap. 2761, obsolete,) and Feb'y. 22d, 1808, before cited.

An act to provide for the erection of a house for the employment and support of the poor in the county of Franklin, March 11th, 1807, (chap. 2766.)

The rents of a tract of land in Falls township, Bucks county, appropriated for the education of poor children within said township, March 24th, 1807, (chap. 2781.)

An act to provide for the erection of a house for the employment and support of the poor in the county of Bucks, April 10th, 1807, (chap. 2849.)

An act to provide for the erection of a poor house for the better relief and employment of the poor in the township of Oxford and Lower Dublin, in the county of Philadelphia, April 11th, 1807, (chap. 2852.)

An act to provide for the erection of a house for the employment and support of the poor in the county of Cumberland, March 24th, 1808, (chap. 2940.) Supplement thereto, April 4th, 1809, (obsolete.)

An act for the better employment, relief and support of the poor within the township of Germantown, in the county of Philadelphia, March 31st, 1809. Limited to six years from that time, and until the close of the then next Session of the Legislature.

A supplement to the act in the text was passed, March 11th, 1809, which enacts that the Overseers of the poor shall be elected and appointed by the same persons, at the same time and in the same manner as Supervisors of the

highways are now elected and appointed; and their accounts shall be audited and settled in like manner, by the same persons appointed to settle the accounts of the Supervisors of the highways. (See title *Roads and Highways* in the General Index.) Provided, that no person shall be obliged to serve as Overseers of the poor more than one year in seven; and this act not to be construed so as to interfere with, or invalidate the respective laws of this commonwealth relating to the establishment of any of the poor houses.

By the existing constitution, art. 7, sect. 1, The legislature shall, as soon as conveniently may be, provide, by law, for the establishment of schools throughout the state, in such manner that the poor may be taught gratis.

The former laws having expired by their own limitation—An act was passed, April 4th, 1809, entitled "An act to provide for the education of the poor gratis."

Besides this general provision, a clause is generally inserted in the acts granting monies to the different county academies, that a certain number of poor shall be taught therein gratis, for a limited time.

By an act passed April 22d, 1794, (chap. 1757,) a benevolent provision was made for the support of certain orphan children left destitute by the contagious disease that prevailed in Philadelphia. (This act, of course, is temporary.)

#### *Fallowfield v. Marlborough.*

*Certiorari* to Chester, to remove an order and judgment of Sessions for the removal of *James Heany*.

Exceptions were taken, that it did not appear the pauper had been examined; nor was any reason set forth why he was not.

*By the Court.* No case can be shewn, where an order was deemed bad, because the examination did not appear on the face of the order. It is not necessary: nor is it necessary that the examination of any person should be set forth. If any pauper was injured by a removal, the remedy might be had here on information; and though it will not restore him, yet he might have complained to the Sessions, where every thing was open. Order confirmed, 1 Dallas, 28.

#### *Upper Dublin v. Germantown.*

Two Justices made an order, removing *Rachael Peters* as a pauper, from *Germantown* to *Upper Dublin*. On appeal, the Quarter Sessions of Philadelphia county confirmed the order. It was



1771.

then removed by *certiorari* into the Supreme Court: and the fact on which *Upper Dublin* relied, was, that the two Justices, at the time the order was made, were inhabitants of, and rateable, and contributory to the poor tax of *Germanatown*.

Upon argument, *The Court* unanimously quashed the order of Sessions, and the order of the two Justices. 2 Dallas, 213.

Order of removal of a pauper must state that the complaint was made by the Overseers of the poor of the township removing; and an adjudication, or assertion, that the pauper was likely to

become chargeable; otherwise the order will be bad. MSS. Reports, Sup. Court. Overseers of Dromore v Overseers of West Hanover, April, 1794.

A pauper gains a settlement by contracting for a town lot, under a yearly rent charge, building thereon, and residence, though he obtains no deed for it. MSS. Reports, Sup. Court. *Republica v. The Overseers of Caernarvon township*, March, 1796.

No appeal lies to the Sessions on an order of maintenance of a pauper. MSS. Rep. Sup. Court. Overseers of Lampeter v. Overseers of Lancaster Borough, December, 1796.

## CHAPTER DCXXXVI.

*An ACT for regulating and continuing the nightly watch, enlightening the streets, lanes and alleys of the city of Philadelphia, and for other purposes therein mentioned.*

**WHEREAS** the well ordering and regulating the watch, and enlightening the streets, lanes and alleys in the night time, within the city of Philadelphia, have been found, on experience, very necessary to prevent fires, murders, burglaries, robberies, breaches of the peace, and other outrages and disorders: *Therefore be it enacted*, That it shall and may be lawful for Samuel Morton, Thomas Mifflin, Edward Duffield, Jacob Winey, Moore Furman, and Joshua Humphreys, gentlemen, who are hereby styled Wardens, or the greater number of them, as soon as conveniently they can, after the publication of this act, and having qualified themselves as is herein after directed, to meet together at the court-house of the said city, and for those who, in pursuance of this act, shall succeed them in the said trust, in like manner to meet together annually, on the sixth day of October, unless it shall be on a Sunday, and in such case on the day following, and then and there, or at such other times and places as they, the said Wardens shall appoint, to maintain, preserve and take care of the lamps already erected, put up and fixed, and to erect, put up and fix, any additional number of lamps, in such parts and places of the said city as to them shall seem meet and expedient; and to contract with any person or persons for the lighting, trimming, snuffing, supplying, maintaining and repairing them; and shall likewise order, appoint, hire and employ what number of watchmen they shall judge necessary and proper, from the time of their first meeting together as aforesaid, after the publication of this act, until the tenth day of October next, and from and after that day annually for one whole year; and shall then and there direct and order what wages shall be given them: And if any of the said watchmen, so by them hired and appointed, shall happen to die within the time for which they were appointed, or shall be negligent in his or their duty, or be guilty of any misbehaviour, it shall and may be lawful for the Wardens aforesaid, or a majority of them, at any intermediate time of the year, to remove any of the said watchmen so appointed, and to employ, hire and appoint, one or more person

Wardens appointed.

Who are to be qualified, and meet, &c.

And to put up a sufficient number of lamps, &c.

And to hire watchmen, &c.

And remove them for misbehaviour, &c.

or persons, fitly qualified, in the room and stead of him or them so dying, neglecting his duty, or misbehaving as aforesaid. 1771.

II. *And be it further enacted*, That the Mayor, Recorder, and four Aldermen of the said city, together with the wardens now or hereafter to be appointed or elected by virtue of this act, or a majority of the whole, shall, as soon as conveniently they can, direct, and set down in writing, at what stands it is fit for the said watchmen to be placed, how often they shall go their rounds, and also appoint the rounds each watchman is to go, and order what number of the constables of the said city shall watch each night; and shall, from time to time, make such further and other orders and regulations, for the better government of the said constables and watchmen, as the nature of each particular service shall seem to them to require.

Orders and regulations for Constables and Watchmen.

III. *And be it further enacted*, That a true copy or transcript of all orders, regulations, nominations and appointments, which shall from time to time be so made as aforesaid, for the better direction and government of the constables and watchmen, shall be fairly written or printed, and signed by the Mayor or Recorder, or any two Aldermen of the said city, and any four of the Wardens aforesaid, or of those who, in pursuance of this act, shall succeed them in the trust aforesaid, and shall be delivered to all and every of the Constables of the said city; and also a true copy of such parts thereof, as shall relate to the conduct and government of the watchmen so to be hired, shall be delivered to each of them.

Copy of orders to be given to the constables and watchmen.

IV. *And be it further enacted*, That one or more of the said Constables, as by the orders and regulations to be made as aforesaid shall be judged necessary, shall attend at the Court-house of the said city, or at such other convenient place, as the Mayor, Recorder, and four of the Aldermen aforesaid, and the Wardens aforesaid or a majority of the whole, shall appoint, and shall keep watch and ward in manner following; that is to say, from the tenth day of March to the tenth day of September, in every year, from the hours of ten in the evening until four the next morning; and from the tenth day of September to the tenth day of March, in every year, from nine in the evening until six in the morning: And the constables shall, in their several turns and courses of watching, use their best endeavours to prevent fires, murders, burglaries, robberies, and other outrages and disorders, within the said city; and to that end shall, and they are hereby empowered and required to arrest and apprehend all night-walkers, malefactors and suspected persons, who shall be found wandering, and misbehaving themselves, and shall take the person or persons who shall be so apprehended, as soon as conveniently they may, before one or more of the Justices of the peace of and for the said city, to be examined and dealt with according to law. And shall once or oftener, at convenient times in every night, go about the several wards of the said city, and take notice whether the watchmen perform their duties in their several stations, according to such orders and regulations as shall have been made for that purpose as aforesaid. And in case any such watchman shall misbehave himself, or neglect his duty, the said constables, or one of them, shall, as soon as conveniently

Hours of keeping watch.

Constables duty.



1771. may be, give notice thereof to some of the Wardens aforesaid, appointed by or hereafter to be appointed or elected according to this act, to the end the said watchman, so neglecting or misbehaving, may be admonished, or discharged from the service, as aforesaid. And the said constable shall also observe, execute and perform all such orders and regulations, as shall, from time to time, be made upon and concerning the matters aforesaid, by virtue of this act, so far as to the constable pertaineth. And the said constable, for every night's watching as aforesaid, shall be paid by the treasurer, to be appointed as herein after mentioned, at the rate of three shillings per night.

Constable's  
pay.

Penalty on  
Constable  
neglecting  
his duty.

V. *And be it further enacted*, That if any of the said constables shall wilfully neglect to attend any night in his or their turns, to keep watch and ward as aforesaid, at the respective hours appointed by this act for his attendance thereon, or shall depart from or leave keeping watch and ward, during the respective hours appointed by this act for keeping the same; or shall neglect to go about the several wards of the said city once at least in every night of his or their watching, for the purposes mentioned in this act; or shall otherwise misbehave him or themselves, or be negligent in the duty prescribed them by this act, or which shall be prescribed to them by any rules, orders or regulations, to be made by the Mayor, Recorder, Aldermen and Wardens as aforesaid, by virtue of this act; in each and every of the said cases the person or persons, so offending, shall respectively forfeit the sum of twenty shillings for every such offence.

Duty of the  
watchmen.

VI. *And be it further enacted*, That it shall and may be lawful to and for the said watchmen, or any of them, in the absence of the constables, and they are also hereby empowered and required in their several stations, during the time of their keeping watch and ward as aforesaid, to apprehend all night-walkers, malefactors, rogues, vagabonds and disorderly persons, whom they shall find disturbing the public peace, or shall have cause to suspect of any evil design, and to carry the person or persons so apprehended, as soon as conveniently may be, before one or more Justices of the Peace of the said city, to be examined and dealt with according to law. And the watchmen, so to be appointed as aforesaid, shall be at their respective stands, to be appointed as aforesaid, and keep watch and ward at the hours and during the time herein before mentioned, and shall observe, perform and execute all such matters and things, as by the rules, orders, and regulations of the Mayor, Recorder, Aldermen and Wardens aforesaid, shall be from time to time enjoined them, upon and concerning the matters aforesaid, according to the directions of this act. And in case of any fire breaking out, or other great necessity, shall immediately alarm each other, and the inhabitants in their respective rounds; which when done, they shall repair to their respective stands, the better to discover any other fire that may happen, as well as to prevent any burglaries, robberies, felonies, breaches of the peace, outrages and disorders, and to apprehend any suspected persons, who, in such times of confusion, may be feloniously carrying off the goods and effects of others.

VII. And whereas the having a sufficient number of pumps in the said city, and keeping them in good repair, may be of great use and



service in extinguishing fires, which may happen within the city; 1771.  
*Be it further enacted,* That the wardens herein before appointed, or hereafter to be chosen by virtue of this act, are hereby authorized and empowered with the consent of the Mayor, Recorder, and any two of the Magistrates of the city, to dig such an additional number of wells, and therein fix pumps, in such convenient places as to them shall appear necessary, within the streets, lanes or alleys of the city. And the said Wardens, or any four of them, are hereby further authorized and empowered to agree with the owner or owners for such pump or pumps, as are already fixed in the streets, lanes or alleys, within the said city, and after such agreement made with the respective owner or owners thereof, such pump or pumps shall for ever after become the property of, and belong to the public, to be maintained and kept in repair at the public charge.

Wardens empowered to dig wells and fix pumps in proper places.

And to purchase pumps already fixed, for the public.

VIII. And whereas many of the pumps within the streets of the said city have been greatly neglected, and suffered to lie long out of repair by their respective owners, *Be it further enacted,* That the said wardens shall, and they are hereby authorized and enjoined to enquire into the condition, and take care of the repair of the said several pumps within the streets, lanes or alleys of the said city; and if, after due enquiry, any of the said pumps shall be found, on the evidence of two or more witnesses, to have been out of repair by the space of three months, next after notice thereof given by one or more of the said Wardens to the owner or owners of the said pumps, then, and in such case, every such pump or pumps shall for ever after become and be the property of the public, to be maintained at the public charge. And every such owner or owners of such pump or pumps, within the streets, lanes and alleys of the said city, as shall duly maintain and keep them in good order and repair, to the satisfaction of the Wardens, or a majority of them, shall be allowed the sum of thirty shillings yearly, to be paid to them, the said owners, out of the monies arising by virtue of this act. [And that every owner or owners of any pump, in his, her or their yard, within the said city, who shall duly maintain and keep it in good order and repair, to the satisfaction of the Wardens as aforesaid, shall be allowed the sum of seven shillings and sixpence yearly, to be paid in manner aforesaid.]\*

To keep the pumps in repair, &c

Thirty shillings a year allowed to owners, who keep their pumps in order, &c.

\* [That part of this section between crotchets is repealed, post. chap. 717. sect. 2.]

IX. *Provided always, and be it further enacted,* That no person or persons whatsoever, who shall take or receive of and from the said Wardens the said sum of thirty shillings yearly, for any pump by him, her or them, so maintained and kept in good order and repair, shall take or receive from any of the inhabitants of the said city any recompence, sum or sums of money, for any water which such inhabitants shall draw, take or make use of, out of the said pumps; but that any person or persons whatsoever shall and may draw, take and make use of the water of the said pumps, as fully and freely as they may the water of the pumps maintained and supported by the said Wardens.

Such owners not to take any recompence from the inhabitants, who make use of their pumps, &c.

X. *And be it further enacted,* That if any person or persons shall and do, after the publication of this act, willfully or maliciously break and carry away the handles of any of the pumps within the said city, or otherwise injure or damage the same, every person so

Penalty on damaging pumps.



1771. offending, and being thereof convicted by the lawful testimony of one or more witnesses, before one or more Justice or Justices of the Peace for the said city, shall, for the first offence, forfeit and pay the sum of five pounds for each pump so broken or damaged, and for the second, and every other offence, the sum of ten pounds.

Wardens how  
to be chosen.

XI. And forasmuch as it is intended that six Wardens shall be continued to assist in the execution of this act, and that the two eldest or first named shall be successively changed, by yearly elections within the said city, *Be it therefore further enacted*, That the freeholders and inhabitants of the said city, qualified to elect and be elected members of Assembly, at the time and place of their electing Burgesses or Representatives of the freemen of the said city, to serve in the Assembly aforesaid, shall then and there yearly, during the continuance of this act, in a peaceable and quiet manner, make choice of two persons for Wardens, to join with four of the Wardens herein before appointed, to execute and perform the services enjoined them by this act; which election shall be carried on in manner following; that is to say, all persons, who, by virtue of the laws of this province, have right to vote in such elections, at the same time they deliver in their tickets for the choice of Burgesses, shall also deliver in writing, in one other piece of paper, to the Judges of those elections, the names of two persons for whom they vote as Wardens. And when all the electors appearing shall have delivered in their papers or tickets, the Sheriff and Judges of those elections shall proceed in taking an account thereof, and publishing the persons duly elected to the service aforesaid, in like manner as by law is directed in the cases of election of Representatives to serve in the General Assembly aforesaid; which Wardens, so from time to time to be chosen, shall be the Wardens, to join with others herein before named to execute this act; so always, that the Wardens herein before appointed shall be successively changed, as is herein directed; that is to say, the two Wardens in this act first named to go out at the end of the year, namely, on the first day of October next; and the two Wardens next after named to go out at the end of the second year; and the other two Wardens last named to go out at the end of the third year. And when the said Wardens shall from time to time be chosen, the Sheriff of the city and county of Philadelphia, or other Judges of the said elections, then and so often shall take their names in writing, under the hands and seals of at least six or more of the said freeholders, and certify the same to the Mayor, Recorder and Aldermen of the said city for the time being, at their General Sessions of the Peace held for the said city next after any such election, there to be entered by the Clerk in the minute-book of the said Court.

XII. And in regard it is intended that the Wardens, together with the City Assessors, shall execute the powers and authorities herein after given and required of them by this act: And forasmuch as the act, passed in the tenth year of Queen Anne, entitled *An act for raising money on the inhabitants of the city of Philadelphia, for the public use and benefit thereof*,\* by which the City Assessors are directed to be chosen, has made no provision for the qualification of the said Assessors to the faithful discharge of their several services and duties, as ought to have been done, and as the Assessors for the

\* Chap. 185.  
repealed.

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respective counties are enjoined to do : *It is therefore enacted, That before any of the Wardens herein nominated, or hereafter to be chosen by virtue of this act, shall take upon themselves the services and duties by this act required, they, and each of them, shall take a legal qualification, of the tenor following ; that is to say, That they will well and truly cause the debts arising by virtue of this act to be speedily adjusted, and the several sums of money hereby imposed to be duly collected, and applied to the purposes by this act intended, and to no other purpose whatsoever ; and that they will diligently attend, and faithfully discharge the duties and services enjoined them by this act, during the term of their continuance therein, according to the best of their skill and abilities.*

Wardens  
qualifica-  
tion.

**XIII.** And before any of the said Assessors, hereafter to be chosen by virtue of the aforesaid act of the tenth of Queen Anne, shall take upon themselves their several duties enjoined by virtue of this or the aforesaid act, entitled *An act for raising money on the inhabitants of the city of Philadelphia, &c.\** they, and each of them, shall take a legal qualification, of the following effect ; that is to say, *That they will well and truly cause the rates and sums of money by this act, and by the aforesaid city act imposed, to be duly and equally assessed and laid, to the best of their skill and knowledge ; and therein will spare no person for favour or affection, nor grieve any for hatred or ill-will ; and that they, and each of them, the said Assessors, will diligently attend, and faithfully execute the said office, during the term of their continuance therein, according to the best of their abilities and judgment.* Which qualifications the Mayor or Recorder, or any two of the Aldermen of the said city, have power, and are hereby enjoined to administer, when required. And the said qualifications shall be put in writing, and signed by those who take them, and certified by the Mayor or Recorder, or Aldermen aforesaid, and filed by the Clerk of the Sessions aforesaid.

\* Chap. 185.  
repealed.

Assessors  
qualification.

**XIV.** And for the better raising and levying of money, for paying the wages of the watchmen, keeping a good and regular watch, enlightening the streets, lanes and alleys, supporting the lamps in good order, and maintaining the public pumps in repair, *Be it enacted, That it shall and may be lawful to and for the Wardens in this act named, together with the city Assessors for the time being, or a majority of them, to meet as soon as they conveniently can, after publication of this act, and for those who shall succeed them in the said trust, as by this act is directed, or any four of them, together with the city Assessors for the time being, or a majority of them, to meet on the sixth day of October, yearly and every year, unless the same shall happen on a Sunday, and then on the day following, at the court-house of the said city, or some other convenient place, and then and there to estimate, determine and judge what sum and sums of money shall be necessary to be raised and levied on the inhabitants of the said city, for paying the debts already contracted by the late Wardens, and for answering the purposes intended by this act.*

Wardens and  
Assessors to  
meet and esti-  
mate what  
money is  
necessary,  
&c.

**XV.** *And be it further enacted, That the said Wardens, and those who shall succeed them in the said trust, or any four of them, shall, within six days after such estimate is made, issue forth their*

And issue  
their pre-  
cepts to the  
Constables.



1771. precepts, directed to the constables of the said city, requiring them to bring to the said Wardens and Assessors, within five days next after the date of such precept, fair and true certificates, in writing, upon their legal qualifications, of the names and surnames of all and every of the persons dwelling or residing within the limits of their wards, and the names of all freemen, inmates, hired servants, and all other persons residing or sojourning in every of the said wards, together with an account of what houses, lands, tenements, rent-charges, bound servants and negroes, with their ages, they respectively hold or possess in such ward, without concealment, fear, malice, favour or affection, upon pain of forfeiture of any sum not exceeding five pounds, to be levied as by this act is appointed. And every of the said constables shall have and receive, from the treasurer hereafter to be appointed, three half-pence per pound, out of the sums to be collected from the inhabitants by them returned, for their care and trouble in executing and returning the said precepts in manner aforesaid. And that the said Wardens and Assessors, or a majority of them, shall meet at the day and place where the said precepts shall be made returnable, and then and there receive the constables returns. And that the said Assessors shall thereupon, by the legal qualifications of the said constables, or other credible persons (which qualifications any of the said Wardens are hereby empowered and required to administer) or by any other lawful ways or means, inform themselves what persons and estates in the said city are rateable by virtue of this act, and shall forthwith equally and impartially assess themselves, and all others, rateable as aforesaid, having a due regard to such as are poor, and have a charge of children, and exempting out of such assessments all single men, who, at the time of assessment, are under twenty-one years of age, or have not been out of their servitude or apprenticeship six months. And all transient persons and strangers, who shall have large quantities of goods and merchandize for sale in the said city, shall, for such goods and merchandize, be rated in proportion to the said inhabitants. And the said Assessors, for their time and labour in the premises, shall be allowed three half-pence per pound for the whole sums assessed, after the assessment is rectified and adjusted by the Wardens according to the directions of this act, to be paid by the treasurer herein after appointed, and to be equally divided amongst them; which said poundage shall be to the Assessors, for the time being, in full satisfaction for all services and attendances required of them by this act: *Provided always*, That no such assessment or assessments, to be made by virtue of this act in any one year, shall exceed the value of five pence in the pound: and that no person shall be chargeable, within the intent and meaning of this act, unless he be assessed at eight pounds, or upwards. (s)

to make returns.

Penalty on Constables.

Constables allowance.

Assessors to assess themselves, and all others.

Exemption.

Assessors' allowance

Limitation of assessments.

Exemption

(s) The duty assigned by this section to the constables is transferred to freeholders, elected for the purpose, by chap. 717, post. The time for making and returning the certificates of the taxables is extended to ten days, *ibid.* And the Assessors were authorized to enlarge the rate specified in the proviso to six pence, *ibid.* Sect. 2, 3. (Note to former edition.)



XVI. And whereas several evil-disposed persons have broken, and may wilfully and maliciously break and destroy the lamps hung out in the streets, lanes and alleys of the said city: To prevent the like malicious practices for the future, *Be it enacted*, That if any person or persons shall and do, from and after the publication of this act, wilfully or maliciously break, throw down, or extinguish any lamp, that is or shall be hung out or set up to light the said streets, lanes or alleys, or shall wilfully and maliciously damage the post, iron, or other furniture thereof, every person so offending therein, and being thereof convicted by the lawful testimony of one or more witness or witnesses, in any Court of Quarter Sessions in and for the said city, shall forfeit and pay the sum of twenty-five pounds for each lamp so broken, thrown down, extinguished, or otherwise damaged, and for each post, iron, or other furniture thereof, so broken or damaged. And if any person or persons shall accidentally or undesignedly break, throw down, or extinguish any of the lamps aforesaid, or damage any of the said posts, irons, or centry-boxes, and, having so done, shall fail of giving notice thereof to some one or more of the said Wardens, within twenty-four hours from the time of the said damage being done, every person, so failing to give notice, shall forfeit double the sum of money necessary, in the judgment of the Wardens aforesaid, to repair the same; but if notice be by him given as aforesaid, he shall only pay so much as, in the judgment of the Wardens aforesaid, will fully repair the damage done, any thing herein contained to the contrary notwithstanding.

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Penalty on  
damaging  
lamps, &c.

XVII. *And be it further enacted*, That the said Wardens and Assessors, the better to enable them to discharge the duties enjoined them by this act, shall choose and employ a fit and able person for their Clerk, who shall, in books to be provided for that purpose by the Wardens, make such entries, and keep such accounts, as he shall be directed to do by the Wardens and Assessors, or a majority of them, from time to time; and shall also make such entries, and keep such accounts, as he shall be required to do by the Wardens, or a majority of them, of all matters and things enjoined them by this act; and also to do and perform all other duties by him to be done in pursuance of this act; for which he shall be allowed such a reasonable reward, as the said Wardens, or any four of them, shall appoint, which shall by an order from the said Wardens, or any four of them, be paid him by the Treasurer.

Wardens and  
Assessors to  
appoint a  
Clerk.

His duty.

and reward

XVIII. *And be it further enacted*, That the said Assessors shall, after the assessments made as aforesaid, appoint one or more fit person or persons to be Collector or Collectors of the said assessments from time to time, and shall cause fair duplicates of the assessments to be drawn, one part thereof shall be by the Clerk delivered to the Wardens, and the other part to the Collector or Collectors, with directions, under the hands of four or more of the Wardens, to every such Collector, indorsed on his duplicate, or annexed thereunto, requiring him or them to demand of the parties the respective sums of money wherewith they are chargeable, and acquaint them of the day of appeal, which shall be appointed by the said Wardens within twenty days after the assessments are made; but where any of the said Collectors cannot meet the party of whom demand is to be made as aforesaid, he or they shall leave notice in writing with some of

Assessors to  
appoint a  
Collector.

Collector's  
duty.



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Duty of  
Wardens on  
appeals.

Collector to  
give notice,  
&c.

Clerks to  
draw dupli-  
cates, &c.

Collectors  
'may distrain,  
&c.

the family, or at the place of the party's last abode, signifying also the day of appeal; at which day the said Collector or Collectors shall return their duplicates, with the names of such persons, and value of such estates as shall be concealed, undervalued, or omitted in the Constables returns; and if any person or persons shall find him, her or themselves, aggrieved with any of the said assessments, supposing the same to be unequal, he, she or they may appeal to the Wardens aforesaid; and the said Wardens are hereby required to meet on the said day of appeal, where the Assessors shall attend, and lay before the Wardens all the written certificates of the names of the taxables, and the account of their estates, returned by the Constables as this act requires, together with the particular valuation set by the said Assessors upon the persons and estates so returned; whereupon the Wardens shall take due notice thereof, and strictly examine the persons appealing, upon their legal qualification, concerning the cause of their appeal, and upon such examination, or other proof, they are hereby empowered to diminish or add to such person's rate or assessment, as to them shall seem just and reasonable, with power also to call before them such persons, and take notice of such estates, as they find are omitted in the said assessments, in order to rectify it; and if the persons so omitted refuse or neglect to appear and give an account of the value of their estates, they shall be rated and assessed according to their estates by the judgment of the said Wardens, or a majority of them. And the said Wardens, upon hearing of the said appeals, shall rectify and adjust the said assessments, by abating or adding to the sums contained in the duplicates, and shall cause their Collector to give the parties concerned, where omissions are supplied, or additions made to their assessments, five days notice to appear before the Wardens, and make their objections thereunto; and the Clerk shall, within five days next after the day of appeal, deliver to the Treasurer, herein after directed to be appointed, a true account of the sums total which the Collector or Collectors aforesaid shall be charged with, pursuant to this act. And the said Wardens shall cause their Clerk to draw fair duplicates of the assessments so rectified as aforesaid, and deliver them to the Collector or Collectors to be appointed as aforesaid, within five days after the said day of appeal, with a warrant annexed thereunto, under the hands and seals of four or more of the said Wardens, requiring him or them forthwith to collect and receive from the persons assessed the several sums in the duplicates mentioned. And in case any person or persons, so rated or assessed by virtue of this act, shall neglect or refuse to pay the sum or sums so assessed by the space of thirty days after demand made as aforesaid, it shall be lawful for the said Collector or Collectors, by virtue of a special warrant for that purpose, signed and sealed by any four or more of the said Wardens, who shall forthwith grant the same, and shall thereby empower the said Collector or Collectors to call to their assistance, if occasion be, any Constable or other person, and, in case of resistance, to break open, in the day-time, any house, trunk, box, chest, closet, cupboard, or other things, where any such offender's goods, chattels or effects, are supposed to be, and make distress and sale thereof, rendering the overplus, if any be, to the

owners, after reasonable charges deducted; but if no distress can be found by the Collector or Collectors, and the party refuses or neglects to shew them goods or chattels of his own forthwith to satisfy the money then due, with reasonable charges, then the said assessments to be levied by imprisonment of the person so refusing or neglecting to pay as aforesaid, until the same shall be paid; or on the goods and chattels of any of his tenants, if such there be, and the delinquent shall be obliged to discount it out of the first rent that shall afterwards accrue from the premises. *Provided always,* That where effects cannot be found sufficient to answer the whole sum in arrear, with charges as aforesaid, then distress shall be made for so much as the effects extend to, and the party be imprisoned, as aforesaid, only for the residue thereof, with incident charges; all which charges of distress, assistance, and bringing to prison, shall be adjusted and settled by any four or more of the said Wardens, when such occasion shall happen. 1771.

Wardens to  
adjust the  
charges.

XIX. *And be it further enacted,* That the said Collector or Collectors shall, once in six weeks at least, render a just and true account of, and bring in and pay unto the Treasurer, herein after directed to be appointed, all such sums of money as he or they shall have received, and shall pay the whole and every of the sums of money assessed in his or their respective duplicates, within three months next after the day of appeal, (such deficiencies as the said Wardens, or any four of them, shall allow, being first deducted) and the Treasurer shall give receipts to the Collectors for what they shall so bring in and pay from time to time, which receipts shall be the Collectors discharge for so much. And the said Treasurer shall, from time to time, signify in writing to the said Wardens how much every Collector brings in and pays as aforesaid. And when the said Collectors, or any of them, are negligent, or refuse to do their duty in the premises, the Treasurer is hereby required forthwith to signify the same, by way of complaint, to the Wardens aforesaid.

Collectors to  
render ac-  
count, &c.

Treasurer to  
give receipts.

XX. *And be it further enacted,* That if, upon complaint of the Treasurer to the Wardens, it shall appear that the said Collector or Collectors, having taken upon him or themselves the duties enjoined him or them by this act, shall refuse or neglect to pay the said sums of money, which he or they shall be respectively charged to collect, within the times limited by this act, every such Collector, so refusing or neglecting, shall forfeit and pay to the Treasurer the sum of five pounds, and shall also pay all the arrearages of such assessment which he was appointed to collect, to be levied by a warrant, under the hands and seals of the said Wardens, or any four of them, directed to the Sheriff of the city and county of Philadelphia, who is hereby authorised and empowered to execute such warrant upon the goods and chattels of such Collector or Collectors, and, in case goods and chattels sufficient cannot be found, then to imprison such Collector or Collectors until payment made. And every Collector so distrained on, and having made full satisfaction as aforesaid, is hereby empowered, without any further warrant, to distrain, for his own use, upon all such as shall neglect or refuse to pay him the arrearages due. And the said Collector or Collectors shall, for his or their trouble and service by this act required and enjoined, retain

Penalty on  
Collectors  
neglecting,  
&c.

Collector be-  
ing distrain-  
ed may dis-  
train, &c.

Collectors  
allowance.



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Penalty on  
Collectors  
refusing to  
serve.

in his or their hands six pence *per* pound, for all sums of money by him or them respectively collected: And if the said Collector or Collectors shall refuse or neglect to take upon him or themselves the trust and duty required of him or them, he or they shall forfeit and pay to the Treasurer herein after appointed the sum of five pounds; and the said Assessors shall appoint some other fit person or persons, in place or stead of the Collector or Collectors so refusing or neglecting as aforesaid.

Penalty on  
Wardens re-  
fusing to  
serve.

New appoint-  
ment how to  
be made.

Wardens to  
be paid five  
shillings *per*  
*diem*.

**XXI.** *And be it further enacted,* That if any of the said Wardens appointed by this act, or those who shall be chosen to succeed them in the said trust, shall refuse or neglect to take upon him or themselves the services and duties hereby required of him or them, he or they, so refusing or neglecting, shall pay to the Treasurer aforesaid ten pounds; or if any of the said Wardens shall happen to die during the time for which they are chosen, the other Wardens and Assessors for the time being, or a majority of them, shall, in every such case, appoint one or more fit person or persons, in place and stead of the Warden or Wardens so refusing or dying. And the said Wardens, for the services required and enjoined them by this act, shall be paid by the Treasurer five shillings each, for every day's attendance on that particular service, which shall be to the Wardens, for the time being, in full satisfaction for all the attendance and services required of them by this act.

Wardens and  
Assessors to  
choose a  
Treasurer.

His duty.

**XXII.** *And be it further enacted,* That the said Wardens and Assessors for the time being, or the major part of them, are hereby empowered and required, as often as there may be occasion during the continuance of this act, to choose a Treasurer; which Treasurer, when so chosen, is hereby empowered and required to receive all the money arising, as well from the said assessments, as also the fines and forfeitures imposed by virtue of this act. And the said Treasurer shall keep a distinct and fair account, in a book to be provided by him for that purpose, of all the rates and assessments made or to be made as aforesaid, and also of all monies by him so received, and also of all disbursements and payments he shall make, by orders from the Wardens, or any four of them, whose orders to the said Treasurer, from time to time, shall be sufficient for the payment of such monies as shall come into his hands.

Treasurer to  
give bond,  
&c.

And settle  
yearly.

Accounts to  
be laid be-  
fore the  
Mayor, &c.

**XXIII.** *And be it further enacted,* That the said Treasurer for the time being, before he enters upon the execution of his office, is hereby required to give a bond, with one or more sufficient sureties, to the Wardens aforesaid, in the penalty of one thousand pounds, lawful money of this province, with condition for the payment of all such monies, which shall come to his hands by virtue of this act, according to the orders to him to be given as aforesaid, from time to time, and not otherwise, and for the due performance of his duty in the trust hereby committed to him. And the said Treasurer shall yearly bring in his accounts, and settle the same with the Wardens and Assessors aforesaid, or a majority of them; which said accounts, so settled and adjusted, shall be laid before the Mayor, Recorder, Aldermen and Grand Jury of the said city, at the General Quarter Sessions of the Peace to be held for the said city in the month of October, yearly, together with the books, receipts and vouchers,



if required; which said accounts, books, receipts and vouchers, being examined by the Mayor, Recorder, Aldermen and Grand Jury aforesaid, shall be delivered back safely, without alteration, to the said Treasurer; and a true copy of the said accounts, to be made out by the Treasurer and delivered to the Court, shall be filed and kept among the records of the said Court. And the said Treasurer shall be allowed, for his trouble in keeping such accounts, and receiving and paying all such money as shall come into his hands by virtue of this act, so much as the Wardens shall think reasonable, not exceeding six pence in the pound. 1771.

Treasurer's allowance.

XXIV. *And be it further enacted*, That if the said Treasurer shall refuse or neglect to do his duty, as by this act is required, he shall be removed from his said office by any four or more of the said Wardens; and in case of such removal, or if the said Treasurer shall happen to die, the Wardens and Assessors, or the major part of them, shall appoint another in his place, who shall give security, as herein before directed. And the Treasurer so removed, or the executors or administrators of the said Treasurer so dying, shall deliver to the succeeding Treasurer, all books, public accounts and papers, belonging to the said office, whole and entire, and undefaced; and shall likewise pay to the succeeding Treasurer all such sum and sums of money, as he may have received, or have been paid to him, in pursuance of this act, under the penalty of one hundred pounds, to be recovered in the manner, and to the uses herein after mentioned.

In case of neglect or death, a new one to be appointed, &c.

Penalty on Treasurer, &c.

XXV. *And be it further enacted*, That all the penalties, fines and forfeitures, to become due and payable by this act, the manner of levying and recovering of which is not before directed, if they do not exceed the sum of five pounds, shall be recovered before one of the Justices of the Peace of and for the said city, and shall be levied by warrant, under the hand and seal of such Justice, or of any other Justice of the Peace of and for the same city, to any Constable of the said city directed, who is hereby empowered and required to execute the same, by distress and sale of the goods and chattels of the offender; and where goods and chattels sufficient cannot be found, then the party or parties offending shall be committed to the common gaol of the said city, there to remain until payment made. And all such penalties, fines and forfeitures, which do exceed the sum of five pounds, the manner of recovering and levying of which is not herein before directed, shall be recovered by action of debt, bill or plaint, in any county court within this province, wherein no essoin, protection, or wager of law, to be allowed. All which recoveries shall be had in the name of and by the Treasurer aforesaid, for the time being, to whom the sums recovered shall be paid, to be by him applied towards defraying the charges of the said nightly watch, and other charges incident thereto, to be recovered with costs of suit.

Manner of levying fines and penalties.

Fines, &c. how to be applied.

XXVI. *Provided always*, That if any person or persons be sued or prosecuted for any thing done in pursuance of this act, he or they may plead the general issue, and give this act and special matter in evidence, for their justification; and if the plaintiff or prosecutor become nonsuit, or forbear prosecution, or suffer discontinuance, or if a verdict pass against him or them in such action or suit, the de-

Persons sued may give this act in evidence.



1771. fendant shall have treble costs, to be recovered as in cases where costs by law are given to defendants.

Punishment  
on negroes,  
&c. trans-  
gressing this  
act.  
\* [Repealed,  
post. chap.  
870. § 7, and  
negroes to be  
tried and  
punished, as  
in other ca-  
ses.]

Limitation  
of prosecu-  
tion.

Deficiency in  
one year's  
rate to be  
supplied by  
the next.

Surplus to be  
carried for-  
ward.

Freeholders  
not choosing  
wardens and  
assessors,  
Mayor and  
Commonalty  
may appoint.

† Chap. 411.  
418.

Acts of the  
Wardens,  
&c. since the  
expiration

[XXVII. *And be it likewise further enacted*, That if any bound servant, Negro or Mulatto slave, be convicted of wilfully and maliciously incurring any of the fines and penalties mentioned in this act, he, she or they shall be whipped on the bare back with twenty-one lashes, at the public whipping-post, and kept on bread and water, at hard labour, in the public work-house, three days, unless the master or mistress of such bound servant or slave, or some other person, shall pay the fine or penalty so incurred.]\*

XXVIII. *Provided always*, That no person or persons shall be sued or prosecuted for neglect in the execution of this act, unless he or they be sued or prosecuted within twelve months after such offence committed.

XXIX. *And be it further enacted*, That in case there shall be any deficiency in any one year's rate or assessment, so that the expenses, costs and charges, arising from the execution and performance of the regulations, acts, matters and things, by this act directed and enjoined, cannot be fully paid and satisfied in that year, then, and in such case, the deficiency so happening, shall be paid out of the next succeeding year's rate and assessment; and if there shall happen to be any surplus money collected by such rates and assessments in any one year, such surplus shall be carried on to the credit of the account of the next year's rate and assessment, to be applied to such use, and in such manner, as the rates and assessments to be collected as aforesaid, are directed by this act to be laid out and applied.

XXX. *And be it further enacted*, That if the freeholders and inhabitants of the said city, at the next or any future general election to be held for the said city as aforesaid, shall neglect to choose the Wardens and Assessors aforesaid, or if the said Wardens and Assessors, when so chosen, shall neglect or refuse to lay the rates and assessments aforesaid, or to do and execute the other services to be by them done and performed by virtue of this act, that then, and in every such case, the Mayor and Commonalty of the said city for the time being, may and shall, until a succeeding election, appoint Wardens or Assessors, or either of them, as the occasion may require, to perform the several and respective offices and duties of the said Wardens and Assessors, as amply and largely as the said Wardens and Assessors, if chosen by the freemen of the said city, might or ought to do, by virtue of this act.

[XXXI. And whereas the act of General Assembly, passed in the thirtieth year of his late Majesty's reign, entitled *An Act for regulating and continuing the nightly watch, enlightening the streets, lanes and alleys of the city of Philadelphia, and for other purposes therein mentioned*,† has been for some time expired, and the Wardens elected have, for the security of the persons and estates of the inhabitants of the said city, proceeded to act under the said law, in the same manner as if it had not been expired, and it is necessary that the acts of the said Wardens should be confirmed: *Be it therefore enacted*, That all and every act, matter and thing, done and performed by the said Wardens, or by others employed by them, in

regulating the nightly watch, enlightening the streets, lanes and alleys of the said city, raising of money on the inhabitants, and in executing other the purposes in the said law mentioned, shall be, and are hereby declared to be, ratified and confirmed, and of the same force, validity and effect, as if the said law had been in full force and virtue.] 1772. of the former law hereby confirmed. [This section is obsolete.]

**XXXII.** *And be it further enacted,* That this act shall be deemed and taken to be a public act, and shall be judicially taken notice of as such by all Judges and Justices, and other persons whatsoever, without specially pleading the same. This act to be deemed a public act.

**XXXIII.** *And be it further enacted,* That this act shall continue in force for the space of five years, and from thence to the end of the next sitting of Assembly, and no longer. Limitation.

Passed 9th March, 1771.—Recorded A. vol. V. page 381. (t)

(t) This act, with some amendments, is made perpetual, by an act passed April 6th, 1776, (chap. 717.) duties enjoined on the Clerk of the Market, &c.

By another supplement, passed May 30th, 1780, (chap. 899,) further powers are given to the Wardens, and certain See the act for incorporating the city, (post. chap. 1333,) and the General Index, title *Philadelphia*.

## CHAPTER DCXXXVIII.

*An ACT to repeal a part of the act, entitled An Act for the preservation of fish in the rivers Delaware, Susquehanna, and the Lehigh, commonly called The Western Branch of Delaware.*

**WHEREAS** in and by the act of General Assembly, passed in the first year of his present Majesty's reign, entitled *An Act for the preservation of fish in the rivers Delaware, Susquehanna, and Lehigh, commonly called The Western Branch of Delaware,\** it is declared and enacted, that so much of the same act as relates to the wears, racks, baskets, fishing-dams, pounds and other devices, erected or to be erected in the river Delaware, should be held and taken to be of no force, until a bill remedying the same mischiefs and inconveniences, by that act intended to be remedied, should be passed into a law by the Legislature of the province of New-Jersey, and be in full force: And whereas, since the passing of the said recited act, the Legislature of the said province of New-Jersey did pass into a law a certain bill, remedying the same mischiefs and inconveniences, which has been for some time expired by its own limitation, whereby it is rendered expedient that so much of the first mentioned act, as relates to the said rivers Delaware and Lehigh, be also rendered invalid: *Be it therefore enacted,* That all and every the provisions, regulations, penalties, acts, matters and things, in the same act contained, which relate to the wears, racks, baskets, fishing-dams, pounds and other devices, erected or to be erected in the said rivers Delaware and Lehigh, shall be, and are hereby declared to be, repealed, null and void, to all intents and purposes. \* Ante. chap. 463. pa. 231.  
Regulations, &c. in a former law repealed.

Passed 9th March, 1771.—Recorded A. vol. V. page 427.



# A C T S

OF THE

## General Assembly of Pennsylvania,

Passed at a Session which commenced October 14th, 1771,  
and ended September 19th, 1772.

1771.

RICHARD PENN, LIEUTENANT GOVERNOR.

### CHAPTER DCXLII.

*An ACT for rendering Justices of the Peace more safe in the execution of their office, and for indemnifying constables and others, acting in obedience to their warrants.*

No writ or process to be served on any Justice, for any thing done in the execution of his office, until notice be given in writing, &c.

**WHEREAS** Justices of the Peace may be discouraged in the execution of their office, by vexatious actions brought against them, for or by reason of small and involuntary errors in their proceedings: And whereas it is necessary that they should be (as far as is consistent with justice, and the safety and liberty of the subjects over whom their authority extends) rendered safe in the execution of the said office and trust: And whereas it is also necessary, that the subject should be protected from all wilful and oppressive abuse of the several laws, committed to the care and execution of the said Justices of the peace: *Be it therefore enacted*, That, from and after the publication of this act, no writ shall be sued out against, nor any copy of any process, at the suit of a subject, shall be served on, any Justice of the Peace, for any thing by him done in the execution of his office, until notice, in writing, of such intended writ or process shall have been delivered to him, or left at the usual place of his abode, by the party, his attorney or agent, who intends to sue, or cause the same to be sued out or served, at least thirty days before the suing out or serving the same; in which notice shall be clearly and explicitly contained the cause of action, which the said party hath, or claimeth to have, against such Justice of the Peace; on the back of which notice shall be indorsed the name of such attorney or agent, together with the place of his abode, who shall be entitled to the fee of twenty shillings for the preparing and serving such notice, and no more.

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II. *And be it further enacted*, That it shall and may be lawful to and for such Justice of the Peace, at any time within thirty days after such notice given as aforesaid, to tender amends to the party complaining, or his or her agent or attorney; and in case the same is not accepted, to plead such tender in bar to any action to be brought against him, grounded on such writ or process, together with the plea of not guilty, and any other plea, with leave of the Court; and if, upon issue joined thereon, the jury shall find the amends so tendered to have been sufficient, then they shall give a verdict for the defendant; and in such case, or in case the plaintiff shall become non-suit, or shall discontinue his or her action, or in case judgment shall be given for such defendant or defendants, upon demurrer, such Justice shall be entitled to the like costs as he would have been entitled unto, in case he had pleaded the general issue only; and if, upon issue so joined, the jury shall find that no amends were tendered, or that the same were insufficient, and also against the defendant or defendants on such other plea or pleas, then they shall give a verdict for the plaintiff, and such damages as they shall think proper, which he or she shall recover, together with his or her costs of suit.

Justice may tender amends to the party complaining, within 30 days after do-  
tice, &c.

III. *And be it further enacted*, That no such plaintiff shall recover any verdict against such Justice, in any case where the action shall be grounded on any act of the defendant, as Justice of the Peace, unless it is proved, upon the trial of such action, that such notice was given as aforesaid; but in default thereof, such Justice shall recover a verdict and costs as aforesaid.

No plaintiff to recover a verdict, unless notice was given, &c.

IV. *And be it further enacted*, That in case such Justice shall neglect to tender any amends, or shall have tendered insufficient amends, before the action brought, it shall and may be lawful for him, by leave of the court where such action shall depend, at any time before issue joined, to pay into Court such sum of money as he shall see fit; whereupon such proceedings, orders and judgments, shall be had, made and given, in and by such court, as in other actions where the defendant is allowed to pay money in court.

Justice neglecting to tender amends before the action, may pay into Court, &c.

V. *And be further enacted*, That no evidence shall be permitted to be given by the plaintiff, on the trial of any such action as aforesaid, of any cause of action, except such as is contained in the notice hereby directed to be given.

VI. *And be it further enacted*, That, from and after the publication hereof, no action shall be brought against any constable or officer, or any person or persons acting by his or their order, and in his aid, for any thing done in obedience to any warrant, under the hand and seal of any Justice of the Peace, until demand hath been made, or left at the usual place of his abode, by the party or parties intending to bring such action, or by his, her or their attorney or agent, in writing, signed by the party demanding the same, of the perusal and copy of such warrant, duly certified under his hand, and the same hath been neglected or refused for the space of six days after such demand: and in case, after such demand, and compliance therewith, by shewing the said warrant, and giving a copy thereof, certified as aforesaid, to the party demanding the same, any action shall be brought against such constable, or other person or persons

No action to be brought against any Constable, &c. until demand hath been made of the perusal and copy of the warrant, &c.



1772. acting in his aid, for any such cause as aforesaid, without making such Justice or Justices, who signed or sealed the said warrant, defendant or defendants, that on producing and proving such warrant at the trial of such action, the jury shall give their verdict for the defendant or defendants, notwithstanding any defect or defects of jurisdiction in such Justice or Justices; and if such action be brought jointly against such Justice or Justices, and also against such constable or other officer, or person or persons acting in his or their aid as aforesaid, then, on proof of such warrant, the jury shall find for such constable or other officer, and person or persons so acting as aforesaid, notwithstanding such defect of jurisdiction as aforesaid; and if the verdict shall be given against the Justice or Justices, that in such case the plaintiff or plaintiffs shall recover his, her or their costs against him or them, to be taxed in such manner, by the proper officer, as to include such costs as such plaintiff or plaintiffs are liable to pay to such defendant or defendants, for whom such verdict shall be found as aforesaid. *Provided always,* That where the plaintiff, in any such action against any such Justice of the Peace, shall obtain a verdict, in case the Justices before whom the cause shall be tried shall, in open court, certify on the back of the record, that the injury for which such action was brought was wilfully and maliciously committed, the plaintiff shall be entitled to have and receive double costs of suit.

Limitation  
of actions.

VII. *Provided always, and be it further enacted,* That no action shall be brought against any Justice of the Peace, for any thing done in the execution of his office, or against any constable or other officer, or person or persons acting as aforesaid, unless commenced within six months after the act committed.

Passed 21st March, 1772.—Recorded A. vol. V. page 507. (u)

(u) *Cook v. Beatty*, a Justice of the Peace.

Debt, £.50. The penalty for marrying plaintiff's infant daughter to one J. B. without a certificate of the consent, agreement, or privity of plaintiff to said marriage, contrary to the act of assembly, &c.

The fact was proved. But no inquiry was made at the bar, whether notice had been served on defendant agreeable to the act in the text; neither the plaintiff's or the defendant's attorney thinking it necessary in this case.

But, by the Court, the act of assem-

bly is in general words, that no such plaintiff shall recover any verdict against any such Justice in any case where the action shall be grounded on any act of defendant, as Justice of the peace, unless it is proved, upon the trial, that notice was given to defendant as by the said act is directed, but in default thereof, the Justice shall recover a verdict and costs, as directed in the said act. The point was however reserved at the request of plaintiff's counsel; but the case afterwards went off upon a reference. *Cumberland*, April 1792. S. MSS.

## CHAPTER DCXLIV.

1772.

An ACT for erecting a part of the counties of Lancaster, Cumberland, Berks, Northampton and Bedford, into a separate county.

WHEREAS a great number of the inhabitants of the counties of Berks and Bedford have represented to the assembly of this province the great hardships they lie under, from being so remote from the present seat of judicature and the public offices: For remedying whereof, *Be it enacted*, That all and singular the lands lying and being within the boundaries following, that is to say, beginning at the mouth of Mohontongo creek, on the west side of the river Susquehanna; thence up the south side of said creek, by the several courses thereof, to the head at Robert Meteer's spring; thence west by north to the top of Tussey's mountain; thence south-westerly, along the summit of the mountain, to Little Juniata; thence up the north-easterly side of the main branch of Little Juniata, to the head thereof; thence north to the line of Berks county; thence northwest, along the said line, to the extremity of the province; thence east, along the north boundary, to that part thereof, which is due north from the most northern part of the Great swamp; thence south to the most northern part of the Swamp aforesaid; thence with a straight line to the head of the Lehigh, or Middle creek; thence down the said creek so far, that a line run west-south-west will strike the forks of Mohontongo creek where Pine creek falls into the same, at the place called Spread Eagle, on the east side of Susquehanna; thence down the southerly side of said creek to the river aforesaid; thence down and across the river to the place of beginning; shall be, and the same is hereby, erected into a county, henceforth to be called Northumberland.

Boundaries  
of the county.

Its name.

Privileges  
granted to it.

II. *And be it further enacted*, That the inhabitants of the said county of Northumberland shall, at all times hereafter, have and enjoy all and singular the jurisdictions, powers, rights, liberties and privileges whatsoever, which the inhabitants of any other county, within the said province, do, may or ought to enjoy, by any charter of privileges, or the laws of this province, or by any other ways and means whatsoever, excepting only in the number of Representatives to serve in General Assembly of this province: In which case it is *Provided, and further enacted*, That the freeholders and inhabitants of each township within the said county, qualified by the laws of this province to elect, shall meet at some convenient place within their respective townships, at the same time the freeholders and inhabitants of the several townships of the other counties shall meet for like purpose, and proceed to choose Inspectors; and that the freemen and inhabitants of the said county, qualified as aforesaid, shall meet at or near Fort-Augusta, at the same time the inhabitants of the other counties shall meet for the like purpose, and

Freeholders  
to meet and  
choose Inspectors.



1772.

One Representative to be elected.

proceed to elect one Representative or Delegate, to serve them in Assembly, in the same manner, and under the same rules, regulations and penalties, as by the charter and laws of this province are directed in respect to other counties; which said Representative, when so chosen, shall be a Member of the General Assembly of the province of Pennsylvania, and shall sit and act as such, as fully and freely as any of the Representatives for the other counties, within this province, do, may, can or ought to do.

Justices of the Supreme Court to have like powers, &c.

IV. *And be it further enacted*, That the Justices of the Supreme Court of this province shall have like powers, jurisdictions, and authorities, within the said county of Northumberland, as by law they are vested with and entitled to in the other counties within the province aforesaid; and are hereby authorized and empowered, from time to time, to deliver the gaols of the said county of capital or other offenders, in like manner as they are authorized to do in other the counties aforesaid.

Courts of Quarter Sessions to be held.

V. *And be it further enacted*, That there shall be a competent number of Justices nominated and authorized by the Governor for the time being, by commissions under the broad seal of the province, which said Justices, or any three of them, shall and may hold Courts of General Quarter Sessions of the Peace and Gaol Delivery, and County Courts for holding of pleas; and shall have all and singular the powers, rights, jurisdictions and authorities, to all intents and purposes, as other the Justices of the Courts of General Quarter Sessions, and Justices of the County Courts for holding of pleas, in the other counties aforesaid, may, can, or ought to have in their respective counties; which said Courts shall, from and after the publication of this act, sit and be held for the said county of Northumberland, on the fourth Tuesday in the months of May, August, November, and February, in every year, at Fort-Augusta, until a court-house shall be built: and when the same is built and erected in the county aforesaid, the said several Courts shall then be holden and kept at the said court-house on the days before mentioned. And the election of a Representative to serve in General Assembly, Assessors, and all other officers of the said county, who are or shall be appointed to be annually elected, shall be made and elected at or near the said court-house, at the same time, and in the same manner, as by the charter of privileges, and the laws of the province aforesaid, are directed to be done in the other counties within this province. And it shall be lawful for the freemen of the said county, for the first year, to choose three Commissioners for raising county rates and levies for the said county.

Time of holding courts.

Time and place of elections.

Passed 21st March, 1772.—Recorded A. vol. V. page 474. (x)

(x) The sections of this act which are omitted, were all occasional, and now obsolete; such as the provision for the collection of taxes assessed in the original counties; the appointment of trustees for the erection of the public buildings for the county; raising money for such purpose; continuing suits; ap-

pointing a collector of excise; running boundary lines, &c.

Boundary lines ascertained, Sept'r 30th, 1779, (chap. 837,) extended to part of the New Purchase, April 8th, 1785, (chap. 1153, sect. 18.) Commissioners appointed to run the lines between Berks, Northampton, Northumberland and Luzerne, April 17th, 1795, (chap. 1837.)

The northern part of Northumberland erected into a new county called Luzerne, Sept'r 25th, 1786, (chap. 1233.) The line between the two counties rectified, Dec'r 27th, 1786, (chap. 1245.)

Part of Northumberland county taken to form the new county of Mifflin, Sept. 19th, 1799, (chap. 1425.) But this part, with an additional part of Northumberland county, was afterwards, with other territory, erected into the county of Centre, Feb'y 13th, 1800, (chap. 2092.) Lycoming county erected out of Northumberland, April 13th, 1795, (chap. 1823.)

By the last enumeration, the county of Northumberland contained six thousand and sixty-one taxables; and together with the county of Luzerne, eight thousand seven hundred and ninety-one taxables: And by the act apportioning the representation in pursuance thereof, passed March 21st, 1808, (chap. 2931,) the county of Northumberland sends four members to the House of Representatives; and, with the county of Luzerne, two members to the Senate.

By the act of Sept'r 1785, (chap. 1164,) the county of Northumberland, according to its then bounds, was divided into four election districts; but part of the second district afterwards fell into the county of Luzerne, and the whole of the fourth district into the county of Lycoming.

Penns and Beaver townships erected into a separate district, and the place of holding elections in the third district altered, Sept'r 26th, 1788, (chap. 1350.) This was called the sixth district; Pot- ters township had been erected into the fifth district, by act of Sept'r 19th, 1786, (chap. 1231;) but that district is now in the county of Centre.

The seventh district established by act of Sept'r 7th, 1789, (chap. 1415,) part of this district is now in the county of Luzerne.

The eighth and ninth districts esta-

blished by act of Sept'r 30th, 1791, (chap. 1579.)

March 21st, 1797, a new district, called the eighth district, erected, (chap. 1922.)

The fourth district new modelled, and the ninth, eleventh, twelfth and thirteenth districts erected, April 4th, 1798, (chap. 1994.)

The fourteenth election district established April 8th, 1799, (chap. 2050.)

Three new districts established; the place for holding elections in Bloom and Brier creek townships altered, and Mahoning township annexed to Washington district, Jan'y 2d, 1801, (chap. 2146.)

Mahoning and Hemlock townships erected into a new district, and called Danville district; the place of holding elections in the sixth district changed, and the lines of New Berlin district altered, March 16th, 1803, (chap. 2335.)

Chilisquaquei district established, and the places of election changed in the seventh and fourteenth districts, March 12th, 1804, (chap. 2443.)

Mahantango township erected into a district, April 4th, 1805, (chap. 2599.)

Upper Mahonoy township formed into a district; the place of holding the elections in Mahonoy township, and in the eighteenth district changed, April 11th, 1807, (chap. 2856.)

Part of West Buffaloe township erected into a separate district; and the places of holding elections in the third and eleventh districts changed, April 4th, 1809.

Augusta township erected into a separate district, March 20th, 1810.

By the Judiciary act of Feb'y 24th, 1806, (chap. 2634,) Northumberland, Luzerne and Lycoming counties compose the eighth Judiciary district.

The courts in Northumberland are held on the third Mondays in January, April, August and November; the term continuing two weeks.

The Supreme Court for the middle district, is held at Sunbury, in this county, by act of April 10th, 1807, (chap. 2846,) and by act of March 11th, 1809, the term commences annually on the third Wednesday next after the third Monday in May.

For other matters relating to Northumberland county, see the General Index, title, *Northumberland County*.

1772.



## CHAPTER DCXLV.

1772.

*An ACT for the sale of goods distrained for rent, and to secure such goods to the persons distraining the same, for the better security of Rents, and for other purposes therein mentioned.*

**WHEREAS** the most ordinary and ready way for recovery of arrears of rent is by distress, and no provision hath yet been made by the laws of this province, that such distresses may be sold, and by the common law the same may be only detained, as pledges for enforcing the payment of such rent, and the persons distraining have little benefit thereby: For the remedying whereof, *Be it enacted*, That, from and after the publication of this act, where any goods or chattels shall be distrained for any rent reserved and due, upon any demise, lease or contract whatsoever, and the tenant or owner of the goods so distrained shall not, within five days next after such distress taken, and notice thereof, with the cause of such taking, left at the mansion-house, or other most notorious place on the premises charged with the rent distrained for, replevy the same, with sufficient security to be given to the Sheriff, according to law, that then, and in such case, after such distress and notice as aforesaid, and expiration of the said five days, the person distraining shall and may, with the Sheriff, Under-Sheriff, or any Constable in the city or county where such distress shall be taken (who are hereby required to be aiding and assisting therein) cause the goods and chattels so distrained to be appraised by two reputable freeholders, who shall have and receive for their trouble the sum of two shillings *per diem* each, and shall first take the following oath or affirmation. *I, A. B. will well and truly, according to the best of my understanding, appraise the goods and chattels of C. D. distrained on for rent by E. F.* Which oath or affirmation such Sheriff, Under-Sheriff or Constable, are hereby empowered and required to administer; and after such appraisement shall or may, after six days public notice, lawfully sell the goods and chattels so distrained for the best price that can be gotten for the same, for and towards satisfaction of the rent for which the said goods and chattels shall be distrained, and of the charges of such distress, appraisement and sale, leaving the overplus, if any, in the hands of the said Sheriff, Under-Sheriff or Constable, for the owner's use.

Manner of proceeding with goods, &c. distrained for rent, &c.

Penalty on any pound-breach or rescous of goods, &c. distrained.

**II.** *And be it further enacted*, That upon any pound-breach or rescous of goods or chattels distrained for rent, the person or persons grieved thereby shall, in a special action upon the case for the wrong thereby sustained, recover his, her or their treble damages, and costs of suit, against the offender or offenders in such rescous or pound-breach, any or either of them; or against the owner or owners of the goods distrained, in case the same be afterwards found to have come to his or their use or possession.

Penalty on persons distraining &c. when no rent in arrear.

**III.** *Provided always, and be it further enacted*, That in case any distress and sale shall be made by virtue of this act, for rent pretended to be in arrear and due, when in truth no rent shall appear to be in arrear or due to the person or persons distraining, or to him or them, in whose name or names, or right, such distress shall be taken as aforesaid, that then the owner of such goods and chattels



distrained and sold as aforesaid, his executors or administrators, shall and may, by action of trespass, or upon the case, to be brought against the person or persons so distraining, any or either of them, his or their executors or administrators, recover double the value of the goods or chattels so distrained and sold, together with full costs of suit. 1772.

IV. *And be it further enacted*, That the goods or chattels lying or being in or upon any messuage, lands or tenements, which are or shall be leased for life or lives, term of years, or otherwise, taken by virtue of any execution, shall be liable to the payment of all such sum or sums of money as are or shall be due for rent for the premises, at the time of taking such goods and chattels by virtue of such execution. And the said Sheriff shall, after sale of the said goods and chattels, pay to the landlord, or other person empowered to receive the same, such rent so due, if so much shall be in his hands, and if not, so much as shall be in his hands, and apply the overplus thereof, if any, towards satisfying the debt and costs in such execution mentioned. *Provided always*, That the said rent, so to be paid to the landlord, shall not exceed one year's rent.\*

Goods and chattels taken in execution, first liable to the payment of rent, &c.

\* So in case of insolvent debtors, chap. 315. sect. 11. ante, pa. 185.

V. *And be it further enacted*, That in case any lessee for life or lives, term of years, at will, or otherwise, of any messuages, lands or tenements, upon the demise whereof any rents are or shall be reserved or made payable, shall, from and after the publication of this act, fraudulently or clandestinely convey or carry off or from such demised premises his goods and chattels, with intent to prevent the landlord or lessor from distraining the same for arrears of such rent so reserved as aforesaid, it shall and may be lawful to and for such lessor or landlord, or any other person or persons, by him for that purpose lawfully empowered, within the space of thirty days next ensuing such conveying away or carrying off such goods or chattels as aforesaid, to take and seize such goods and chattels, wherever the same may be found, as a distress for the said arrears of such rent, and the same to sell, or otherwise dispose of, in such manner, as if the said goods and chattels had actually been distrained by such lessor or landlord in and upon such demised premises, for such arrears of rent, any law, custom or usage, to the contrary notwithstanding.

Goods and chattels clandestinely conveyed away, to prevent being distrained on, may be seized, wherever found within thirty days.

VI. *Provided nevertheless*, That nothing herein contained shall extend, or be deemed or construed to extend, to empower such lessor or landlord to take or seize any such goods or chattels as a distress for arrears of rent, which shall be, *bona fide*, and for a valuable consideration, sold before such seizure made to any person or persons not privy to such fraud as aforesaid, any thing herein to the contrary notwithstanding.

Unless sold before such seizure be made.

VII. *And be it further enacted*, That from and after the publication of this act, it shall and may be lawful to and for every lessor or landlord, lessors or landlords, or his, her or their bailiff, receiver, or other person or persons empowered by him, her or them, to take and seize, as a distress for arrears of rent, any cattle or stock of their respective tenant or tenants, feeding or depasturing upon all or any part of the premises demised or holden; and also to take and seize all sorts of corn and grass, hops, roots, fruits, pulse or

Cattle, stock, corn, grass, &c. may be seized as a distress for arrears of rent, &c.



1772. other product whatsoever, which shall be growing on any part of the estate or estates so demised or holden, as a distress for arrears of rent, and to appraise, sell, or otherwise dispose of the same, towards satisfaction of the rent for which such distress shall have been taken, and of the charges of such distress, appraisement and sale, in the same manner as other goods and chattels may be seized, distrained and disposed of, and that the purchaser of any such corn, grass, hops, roots, fruits, pulse or other product, shall have free egress and regress to and from the same where growing, to repair the fences from time to time, and when ripe to cut, gather, make, cure, and lay up and thresh, and after to carry the same away, in the same manner as the tenant might legally have done, had such distress never been made.

VIII. "And whereas great inconveniences may frequently happen to landlords, by their tenants secreting declarations in ejectment, which may be delivered to them, or by refusing to appear to such ejectments, or to suffer their landlords to take upon them the defence thereof:" *Be it further enacted*, That, from and after the publication of this act, every tenant, to whom any declaration in ejectment shall be delivered for any lands, tenements or hereditaments, within this province, shall forthwith give notice thereof to his or her landlord or landlords, or his, her or their bailiff, receiver, agent or attorney, under penalty of forfeiting the value of two years rent of the premises so demised, or holden in the possession of such tenant, to the person of whom he or she holds; to be recovered by action of debt, to be brought in any of the Courts of Common Pleas within this province, wherein no essoin, protection or wager of law, shall be allowed, nor any more than one imparlance.

Penalty on tenants secreting declaration in ejectment, &c.

Manner of proceeding, where ejectment is brought.

IX. *And be it further enacted*, That it shall and may be lawful for the court where such ejectment shall be brought to suffer the landlord or landlords to make him, her or themselves defendant or defendants, by joining with the tenant or tenants, to whom such declaration in ejectment shall be delivered, in case he or they shall appear; but in case such tenant or tenants shall refuse or neglect to appear, judgment shall be signed against the casual ejector, for want of such appearance; but if the landlord or landlords of any part of the lands, tenements or hereditaments, for which such ejectment was brought, shall desire to appear by himself or themselves, and consent to enter into the like rule, that, by the course of the court, the tenant in possession, in case he or she had appeared, ought to have done, then the court where such ejectment shall be brought shall and may permit such landlord so to do, and order a stay of execution upon such judgment against the casual ejector, until they shall make further order therein.

Defendants in replevin to avow or make conuzance, &c.

X. And whereas great difficulties often arise in making avowries or conuzance upon distresses for rent: *Be it further enacted*, That, from and after the publication of this act, it shall and may be lawful for all defendants in replevin to avow and make conuzance generally, that the plaintiff in replevin, or other tenant of the lands and tenements whereon such distress was made, enjoyed the same under a grant or demise, at such a certain rent or service, during the time wherein the rent or service, distrained for incurred, which



rent or service was then and still remains due, without further setting forth the grant, tenure, demise or title, of such landlord or landlords, lessor or lessors, any law or usage to the contrary notwithstanding; and if the plaintiff or plaintiffs in such action shall become non suit, discontinue his, her or their action, or have judgment given against him, her or them, the defendant or defendants in such replevin shall recover double costs of suit.

1772.

**XI.** And to prevent vexatious replevins of distresses taken for rent, *Be it enacted*, That, from after the publication of this act, all Sheriffs and other officers, having authority to serve replevins, may and shall, in every replevin of a distress for rent, take in their own names from the plaintiff, and one responsible person as surety, a bond, in double the value of the goods distrained (such value to be ascertained by the oath or affirmation of one or more credible person or persons, not interested in the goods or distress; which oath or affirmation the person serving such replevin is hereby authorized and required to administer) and conditioned for prosecuting the suit with effect, and without delay, and for duly returning the goods and chattels distrained, in case a return shall be awarded before any deliverance be made of the distress, and that such Sheriff, or other officer as aforesaid, taking any such bond, shall, at the request and costs of the avowant or person making conuzance, assign such bond to the avowant or person aforesaid, by indorsing the same, and attesting it under his hand and seal, in the presence of two credible witnesses; and if the bond so taken and assigned be forfeited, the avowant or person making conuzance may bring an action, and recover thereupon in his own name; and the Court where such action shall be brought may, by a rule of the same Court, give such relief to the parties upon such bond, as may be agreeable to justice and reason; and such rule shall have the nature and effect of a defeasance to such bond.

Sheriff, &c.  
serving re-  
plevins, to  
take a bond  
from the  
plaintiff, &c.

**XII.** And whereas it frequently happens within this province, that lessees or tenants for years, or at will, often hold over the tenements to them demised after the determination of such leases, and although such lessees and tenants have been required to deliver up the tenements to the landlord or lessor, who had occasion to dwell in his own house, or give, grant or demise the same to another, yet they have most unjustly refused so to do, and have obliged the lessors or landlords, at a great expense, to bring ejectments against their tenants, and, by the delays incident to law proceedings, have kept the owner of the house at law, and out of possession, several years: For preventing therefore such unjust practices, *Be it further enacted*, That where any person or persons in this province, having leased or demised any lands or tenements to any person or persons for a term of one or more years, or at will, paying certain rents, and he or they, or his or their heirs or assigns, shall be desirous upon the determination of the lease to have again and re-possess his or their estate so demised, and for that purpose shall demand and require his or their lessee or tenant to remove from and leave the same, if the lessee or tenant shall refuse to comply therewith, in three months after such request to him made, it shall and may be lawful to and for such lessor or lessors, his or their heirs and

Manner of  
landlord's  
proceeding  
to gain re-  
possession,  
&c.



1772. assigns, to complain thereof to any two Justices of the city, town or county where the demised premises are situate, and upon due proof made before the said Justices, that the said lessor or lessors had been quietly and peaceably possessed of the lands or tenements so demanded to be delivered up, that he or they demised the same, under certain rents, to the then tenant in possession, or some person or persons under whom such tenant claims, or came into possession, and that the term for which the same was demised is fully ended, that then, and in such case, it shall and may be lawful for the said two Justices, to whom complaint shall be made as aforesaid, and they are hereby enjoined and required forthwith to issue their warrant, in nature of a summons, directed to the Sheriff of the county, thereby commanding the Sheriff to summon twelve substantial freeholders to appear before the said Justices, within four days next after issuing the same summons, and also to summon the lessee or tenant, or other person claiming or coming into possession under the said lessee or tenant, at the same time to appear before them, the said Justices and freeholders, to shew cause, if any he has, why restitution of the possession of the demised premises should not be forthwith made to such lessor or lessors, his or their heirs or assigns; and if, upon hearing the parties, or in case of the tenant's, or other persons claiming or coming into possession under the said lessee or tenant, neglect to appear after being summoned as aforesaid, it shall appear to the said Justices and freeholders, that the lessor or lessors had been possessed of the lands or tenements in question, that he or they had demised the same for a term of years, or at will to the person in possession, or some other under whom he or she claims or came into possession, at a certain yearly or other rent, and that the term is fully ended, that demand had been made of the lessee, or other person in possession as aforesaid, to leave the premises three months before such application to the said Justices, that then, and in every such case, it shall and may be lawful for the said two Justices to make a record of such finding by them, the said Justices and freeholders, and the said freeholders shall assess such damages as they think right against the tenant, or other person in possession as aforesaid, for the unjust detention of the demised premises, for which damages, and reasonable costs, judgment shall be entered by the said Justices, which judgment shall be final and conclusive to the parties, and upon which the said Justices shall, and they are hereby enjoined and required to issue their warrant, under their hands and seals, directed to the Sheriff of the county, commanding him forthwith to deliver to the lessor or lessors, his or their heirs or assigns, full possession of the demised premises aforesaid, and to levy the costs, taxed by the Justices, and damages so by the freeholders aforesaid assessed, of the goods and chattels of the lessee or tenant, or other person in possession as aforesaid, any law, custom or usage, to the contrary notwithstanding.

XIII. *Provided always nevertheless,* That if the tenant shall allege that the title to the lands and tenements in question is disputed and claimed by some other person or persons, whom he shall name, in virtue of a right or title accrued or happening since the commencement of the lease, so as aforesaid made to him, by descent, deed, or



from or under the last will of the lessor, and if thereupon the person so claiming shall forthwith, or upon a summons, immediately to be issued by the said Justices, returnable in six days next following, before them appear, and on oath or affirmation, to be by the said Justices administered, declare that he verily believes that he is entitled to the premises in dispute, and shall, with one or more sufficient sureties, become bound by recognizance in the sum of one hundred pounds to the lessor or lessors, his or their heirs or assigns, to prosecute his claim at the next Court of Common Pleas to be held for the county where the said lands and tenements shall be, that then, and in such case, and not otherwise, the said Justices shall forbear to give the said judgment. *Provided also*, That if the said claim shall not be prosecuted, according to the true intent and meaning of the said recognizance, it shall be forfeited to the use of the lessor or landlord, and the Justices aforesaid shall proceed to give judgment, and cause the lands and tenements aforesaid to be delivered to him in the manner herein before enjoined and directed.

XIV. And whereas, after the determination of such leases so made as aforesaid, no distress can by law be made for any arrears of rent that grew due on such respective leases before the determination thereof: *Be it therefore further enacted*, That, from and after the publication of this act, it shall and may be lawful for any person or persons, having any rent in arrear or due upon any lease for life or lives, or for one or more years, or at will, ended or determined, to distrain for such arrears after the determination of the said respective leases, in the same manner as they might have done, if such lease or leases had not been ended or determined; provided that such distress be made during the continuance of such lessor's title or interest.

Arrears of rent may be distrained for after the determination of leases, &c.

Passed 21st March, 1772.—Recorded A. vol. V. page 457. (y)

(y) By an act passed April 6th, 1802, (chap. 2294,) entitled "An act to enable purchasers at Sheriffs' or Coroners' sales to obtain possession." The purchasers of lands, &c. at Sheriffs' sales may give notice to the defendant, or person in possession, requiring him to surrender up the same; and the manner of proceeding to gain the possession, where it is withheld for three months after such notice; and also where the person in possession disclaims to hold under the defendant named in the execution, by virtue whereof the sale was made, is prescribed, being similar to the mode of proceeding directed in the twelfth and thirteenth sections of the act in the text; and no *certiorari* shall be a *supersedeas*, or have any effect to prevent or delay the execution, or delivery of possession.

Where such sale has been made of lands under lease, at the time of sale; the purchaser, after receiving the Sheriff's deed, shall be considered as the landlord, and shall have, the like remedies by distress, or otherwise, to

recover any rents due, subsequent to such sale; as the defendant, as whose property the same was sold, might or could have, if no such sale had taken place; and if, after notice of such sale, the tenant, or other person occupying the premises, shall pay any rent to the former landlord, he shall be liable to repay the same to the purchaser. The remaining part of the act relates to sales previously made.

By the 20th section of the act of March 20th, 1810, consolidating the different laws for the recovery of debts and demands not exceeding one hundred dollars, which repeals and supplies a former act containing a similar provision, the powers of Justices of the peace are extended to all cases of rent, not exceeding one hundred dollars, so far as to compel the landlord to defalcate, or set off the just account of the tenant out of the same; but the landlord may waive further proceedings before the Justice, and pursue the method of distress in the usual manner, for the balance so settled; but if any landlord



1772. shall be convicted, after such waiver, in any Court of Record, of distraining for, and selling more than to the amount of such balance, and of detaining the surplus in his hands, he shall forfeit to the tenant four times the amount of the sum detained. But no appeal shall lie in the case of rent, but the remedy by replevin shall remain as heretofore.

The ancient fictitious mode of proceeding by the delivery of a declaration in ejectment, is abolished by the 12th section of the act to regulate arbitrations and proceedings in Courts of Justice, passed March 21st, 1806, (chap. 2686,) and a new writ of ejectment is formed; and it is declared that an ejectment shall not be brought *otherwise*. But no provision is made for the case of notice to the landlord, when such writ may be served on the tenant, and it may deserve consideration, how far the eighth section of the act in the text is affected by the new act. By the supplement, passed April 13th, 1807, (chap. 2872,) a provision is introduced corresponding with the ninth section of the act in the text, "That the defendant may defend upon his own title, or the title of third persons; and the landlord may, as heretofore, be admitted as defendant, and in such case on the trial, shall admit himself in possession.

Connected with the subject of the act in the text, there are various English statutes extending to Pennsylvania.

Thus, the remedy for an excessive distress, is founded on the statute of *Marlborough* (commonly called the statute of *Marlbridge*,) 52, Hen. 3, chap. 4.

"None from henceforth shall cause any distress that he hath taken, to be driven out of the county where it was taken; and if one neighbour do so to another of his own authority, and without judgment, he shall make fine as for a thing done against the peace: nevertheless, if the lord presume so to do against his tenant, he shall be grievously punished by amerciamment. Moreover, distresses shall be reasonable, and not too great. And he that taketh great and unreasonable distresses, shall be grievously amerced for the excess of such distresses."

1 & 2, *Philip & Mary*, chap. 12, an act for the impounding of distresses. "No distress of cattle shall be driven out of the hundred, &c. where such distress is, or shall be taken, except that it be to a pound *overt* within the same shire, not above three miles distant from the place where the said distress is taken; and that no cattle, or other goods, distrained or taken by way of distress for any manner of cause at one time, shall

be impounded in several places, whereby the owner, or owners of such distress shall be constrained to sue several replevies for the delivery of the said distress so taken at one time; upon pain every person offending contrary to this act, shall forfeit to the party grieved, for every such offence, an hundred shillings, and treble damages."

52, Hen. 3, chap. 15, (*stat. of Marlbr.*) In what places distresses shall not be taken. "It shall be lawful for no man from henceforth, for any manner of cause to take distresses out of his fee, nor in the King's highway, nor in the common street, &c."

11th Geo. 2, chap. 19, sect. 14. And to obviate some difficulties that many times occur in the recovery of rents, where the demises are not by deed, *Be it enacted, &c.* That it shall and may be lawful to and for the landlord or landlords, where the agreement is not by deed, to recover a reasonable satisfaction for the lands, tenements or hereditaments, held or occupied by the defendant or defendants, in an action on the case, for the use and occupation of what was so held or enjoyed; and if in evidence on the trial of such action, any parol demise, or any agreement, (not being by deed) whereon a certain rent was reserved, shall appear, the plaintiff in such action shall not therefore be nonsuited, but may make use thereof as an evidence of the *quantum* of damages to be recovered.

SECT. 15. And whereas where any lessor or landlord, having only an estate for life in the lands, tenements or hereditaments demised, happens to die before, or on the day, on which any rent is reserved, or made payable, such rent, or any part thereof, is not by law recoverable by the executors or administrators of such lessor or landlord; nor is the person in reversion entitled thereto, any other than for the use and occupation of such lands, tenements or hereditaments from the death of tenant for life; of which advantage hath been often taken by the under-tenants, who thereby avoid paying any thing for the same: For remedy whereof, *Be it enacted, &c.* That where any tenant for life shall happen to die before, or on the day, on which any rent was reserved or made payable upon any demise or lease of any lands, tenements or hereditaments, which determined on the death of such tenant for life, that the executors or administrators of such tenant for life, shall and may, in an action on the case, recover of and from such under-tenant, or under-tenants of such lands, tenements or hereditaments, if such tenant for life die on the day on



which the same was made payable, the whole, or if before such day, then a proportion, of such rent according to the time such tenant for life lived, of the last year, or quarter of a year, or other time in which the said rent was growing due as aforesaid, making all just allowances, or a proportionable part thereof respectively.

The stat. of 32 Hen. 8, chap. 34, gives to grantees of reversions advantage of the conditions to be performed by the lessees. (Such part as relates to the king and his grantees, does not, of course, extend to Pennsylvania.) It is enacted, "That as well all and every person and persons, and bodies politic, being grantees or assignees, &c. their heirs, executors, successors and assigns of every of them, shall and may have and enjoy like advantages against the lessees, their executors administrators and assigns, by entry for non payment of the rent, or for doing waste, or other forfeiture; and also shall and may have and enjoy all and every such like and the same advantage, benefit and remedies by action only for not performing of other conditions, covenants or agreements contained and expressed in the indentures of their said leases, demises or grants, against all and every the said lessees and farmers and grantees, their executors, administrators and assigns, as the said lessors, or grantors themselves, or their heirs or successors ought, should or might have had and enjoyed at any time or times, in like manner and form, &c. moreover, *Be it enacted, &c.* That all farmers, lessees and grantees of manors, lands, tenements, rents, portions, or any other hereditaments for term of years, life or lives, their executors, administrators or assigns shall and may have like action, advantage and remedy against all and every person and persons and bodies politic, their heirs, successors and assigns which have, or shall have any gift or grant of any other person or persons of the reversion of the same manors, lands, tenements and other hereditaments so letten, or any parcel thereof, for any condition, covenant or agreement contained or expressed in the indentures of their lease and leases as the same lessees or any of them might and should have had against the said lessors and grantees, their heirs and successors; all benefits and advantages of recoveries in value by reason of any warrants in deed or in law by voucher or otherwise only excepted.

32 Hen. 8, chap. 37. For recovery of arrearages of rents by executors of tenant in fee simple.

*Be it enacted, &c.* That the executors and administrators of every person or persons unto whom any rent or fee farm is or shall be due, and not paid at the time of his death, shall and may have an action of debt for all such arrearages against the tenant or tenants that ought to have paid the said rent or fee farms so being behind in the life of their testator, or against the executors or administrators of the said tenants; and also further more, it shall be lawful to every such executor and administrator of any such person or persons unto whom such rent or fee farm is or shall be due, and not paid at the time of his death as is aforesaid, to distrain for the arrearages of all such rents and fee farms, upon the lands, tenements and other hereditaments, which were charged with the payment of such rents and fee farms, and chargeable to the distress of the said testator, so long as the said lands, tenements or hereditaments continue, remain and be in the seisin or possession of the said tenant in demesne, who ought immediately to have paid the said rent or fee farm so being behind, to the said testator in his life or in the seisin or possession of any other person or persons claiming the said lands, tenements and hereditaments only by and from the same tenant by purchase, gift or descent, in like manner and form as their said testator might or ought to have done in his life time; and the said executors and administrators shall, for the same distress, lawfully make avowry upon their matter aforesaid.

*And be it further enacted,* That if any man which now hath or hereafter shall have in the right of his wife, any estate in fee simple, fee tail or for term of life of, or in any rents or fee farms, and the same rents or fee farms now be, or hereafter shall be due, behind and unpaid in the said wife's life; then the said husband, after the death of his said wife, his executors and administrators, shall have an action of debt for the said arrearages against the tenant of the demesne that ought to have paid the same, his executors and administrators; and also the said husband, after the death of his said wife, may distrain for the said arrearages, in like manner and form, as he might have done if his said wife had been then living, and make avowry upon his matter as is aforesaid.

*And likewise, it is further enacted,* that if any person or persons shall have any rents or fee farms for term of life or lives of any other person or persons, and the said rent or fee farms shall be due, behind, and unpaid, in the life of such person or persons for whose life or lives



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the estate of the said rent or fee farm did depend or continue, and after the said person or persons do die, then he unto whom the said rent or fee farm was due in form aforesaid, his executors or administrators, shall and may have an action of debt against the tenant in demesne, that ought to have paid the same when it was first due, his executors and administrators; and also distrain for the same arrearages upon such lands and tenements out of which the said rents or fee farms were issuing and payable, in such like manner and form as he ought or might have done, if such person or persons by whose death the aforesaid estate in the said rents and fee farms was determined and expired, had been in full life, and not dead; and the avowry for the taking of the same distress to be made in manner and form aforesaid.

The following statutes, prior in point of time to the foregoing, also extend to Pennsylvania, and are connected with the subject of landlord and tenant; but not so immediately with the subject matter of the act in the text, as 11 Hen. 6, chap. 5, which provides a remedy where a tenant granteth over his estate, taketh the profits, and committeth waste, 7 Hen. 8, chap. 4, an act concerning avowries for rents and services—How rents and services may be recovered by avowry; the recoveror in a common recovery, may distrain for the rents and services of the tenant, &c. 32 Hen. 8, chap. 28. Lessees to enjoy the farm against tenants in tail; and of leases made by husband and wife, of lands held in right of the wife, &c.

See chap. 139, ante, page 44, and the notes thereto subjoined.

The following points have been determined, under the 11th section of the act in the text.

#### *Murdock v. Will.*

Action against the Sheriff for taking insufficient sureties on a replevin bond. The President of the Common Pleas laid down the following positions:

1. That as the law gives the remedy of distress to a landlord, it is incumbent upon the Sheriff to see that the security is good, before he returns the property on a replevin.

2. That evidence of a vague report of the surety's being in good circumstances, is not sufficient to repel the proof made by the plaintiff, that his circumstances were bad at the time of the replevin.

3. That the value of the distress, at the time of the replevin, and not the amount of the rent due, is the proper measure of damages in this action.

4. That, therefore, the goods distrained ought (although a contrary practice has prevailed) to be valued before they are delivered on a replevin.

Verdict for the plaintiff, for the value of the goods distrained. 1 Dallas, 341.

And in the case of *Oxley v. Copperthwaite*, 1 Dallas, 349, which was also an action for taking insufficient sureties on a replevin bond; the question was, whether a Sheriff is responsible that the sureties shall prove sufficient on the event of the replevin; or only that they were of good credit at the time of their entering into the bond?

*Shippen, President.*—The case of a bail bond differs, I think, in one respect, at least, from a replevin bond; for the sufficiency of the former may speedily be inquired into, but the latter must wait the event of the replevin, which may be suspended for several years, until, perhaps, by the vicissitudes of trade and fortune, the sureties have become insolvent. This, therefore, is certainly a hard part of the Sheriff's duty. But there is likewise a hardship in the case of the landlord; for, by the replevin he is divested of the immediate security of his tenant's goods, and yet has no right to interfere in the choice of the sureties, that undertake to see them returned when he has established his demand.

From this view, then, it certainly seems reasonable, that he, who is exclusively authorised to take and judge of the security, should rather be affected by its eventual insufficiency, than he who has no right to question its validity. The authorities, indeed, are positive, that, if the sureties do not *prove sufficient*, the Sheriff is liable; and, although the case must frequently have happened, no contrary decision can be produced; for, in *Murdock v. Will*, and *Welsh v. Proctor*, both lately tried here, the counsel put the cases upon the point of insufficiency of the sureties at the time of taking them; so that the present point never came in question.

That the policy of the law bears hard in this respect upon the Sheriff, may be a reason with the legislature to make some new provision for an enquiry into the sufficiency of the bail in an earlier stage of the cause; but cannot be a justification for our deciding, at this time, contrary to an established principle.

The Court are, therefore, clearly of opinion, that the verdict, on the question of law, ought to be in favour of the plaintiff.

Verdict accordingly, for plaintiff, for damages to the value of the goods at the time they were distrained.

So, it was adjudged, in the case of *Miller v. Foutz*, in the Supreme Court,



Dec'r, 1798. That the bail for defendant in replevin, on a *claim of property*, are liable to the extent of the penalty of their bond. MSS. Reports.

In *Philips v. Hyde*, 1 Dallas, 439. Debt upon a replevin bond:—after judgment *de retorno habendo*, the Sheriff returned an *elongatur*.

The defendant offered to prove, that the goods had been tendered to the plaintiff; and, therefore, that the condition of the replevin bond had been performed.

This was opposed, on the ground, that no evidence could be received to contradict the Sheriff's return. See 12, Mod. 424. T. Raym. 485, 487. 2 Mod. 10, 11. Cro. El. 872, pl. 9.

In reply, it was admitted, that some returns of the Sheriff could not be traversed; but it was contended, that the return of *elongatur* was not of that class. See 12 Mod. 426.

The Court over-ruled the evidence.

A question then arose, whether the jury could include the costs which had accrued on the *replevin*, in their verdict in the present action: and the Court were clearly of opinion, that they could, and ought to do so. Conformably to which was the verdict of the jury.

And, goods distrained and replevied are discharged from the lien of the distrainer: but if the identical goods distrained are found in the hands of the tenant, undisposed of, and unincumbered, they may be taken on a *retorno habendo*. (See sect. 1.)

Thus, in the case of *Woglam v. Copperthwaite*, 2 Dallas, 68,—which was an action brought by the Sheriff of Philadelphia, for taking goods by virtue of a writ *de retorno habendo*; the facts were as follow: One Cresson distrained goods of Hamilton, for rent due to S. Emlen: Hamilton replevied the goods, and gave security to the Sheriff in the usual form; he afterwards moved with his goods into the house of the plaintiff, who, after rent had accrued to him, distrained the goods; Hamilton, the next day after this distress, removed the goods from off the premises; they were followed by the officer, who made the second distress, and he had them appraised in the house to which Hamilton had removed them; shortly after this appraisement, and while the goods remained where they were appraised, the defendant in the first replevin obtained judgment for his rent, and issued a *retorno habendo*; by virtue of which, the Sheriff took the goods, and delivered them to Cresson, who sold them at public vendue.

The question submitted to the Court was, whether the goods were liable to

be taken under the *retorno habendo*, in preference of, or to exclude Woglam's distress? or whether, by the removal of the goods by Hamilton, the lien on the property, acquired by Woglam's distress was not defeated as against Emlen?

The President, after recapitulating the above facts, delivered the opinion of the Court.

*Shippen, President.* The first point which arises on the case, is, whether there was any subsisting lien in favour of the first distrainer, the goods having been replevied, and security given?

Whatever doubt there might have been before, it appears to be now settled (1. Bro. Chan. Ca. 427,) that no lien remained in the distrainer. By the replevin, the securities in the bond are substituted in the place of the goods, which are restored to the tenant, as his sole property; he may sell them; they may be taken in execution; and they become liable to any future lien or incumbrance. Upon the *retorno habendo*, if the identical goods distrained, are found in the hands of the tenant undisposed of, and unincumbered, they may be taken by the Sheriff; if not, after an *elongati* returned, a *withernam* may go against the general goods of the tenant.

As to the removal of the goods by the tenant, and the subsequent *appraisement*, it will be proper to take notice of the alterations made in the common law, by the statutes in England, and our acts of Assembly.

Distresses for rent being, at common law, in nature only of pledges, the distrainer had no power to sell or dispose of them, till the stat. 2 Wm. and Ma. c. 5, § 2, which directs, that, if upon a distress made, the tenant did not, in five days after, replevy the same, the person distraining might, with a proper officer, cause the goods distrained to be appraised, and after such appraisement to be sold. The stat. of the 11 Geo. 2, c. 19, makes it lawful for the distrainer to impound the distress on the premises, and there to appraise, sell and dispose of them. Our act of assembly pursues, in general, the stat. of William, and contains some of the clauses of the latter statute, but omits that which empowers the landlord to impound on the premises; the usage, however, has been, both before and since our act of assembly, to impound on the premises agreeable to the directions of the act of Geo. 2d. Whether that usage will amount to an adoption of the statute, need not be considered in the present case, because the goods did not remain upon the premises that length of time which the statute requires to give the landlord a



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right to appraise and sell them without a removal; but it is material to consider whether under our act of assembly he might not legally leave them on the premises, for the space of time which he appears to have done. The clause in the statute of *William* before recited, is transcribed, almost *verbatim* in the act of assembly. The case of *Griffin v. Scott* in 2 Stra. 717, was determined many years previous to the stat. 11 Geo. 2. It was an action of trespass against a landlord, for entering his house, and keeping possession of his goods for eight days. The defendant justified under a distress for rent, and the court say in that case, that the defendant ought to have removed the goods *at the five days end*, but having kept them for *eight days*, he was a trespasser for the *other three days*. This implied strongly, that the construction of the stat. of *William* was, that the distrainer might leave the distress on the premises *for five days*, mentioned in the act, that the tenant might have the opportunity of replevying them, in the same plight in which they were, when distrained. If that was the construction of the statute of *William*, the like construction will hold under our act of assembly, which follows the words of the statute. Even at common law, goods distrained might be left on the premises for a reasonable time. In the present case they were left but one day before they were removed by the tenant himself, and they were quickly followed, and appraised in the house to which they were removed. By the act of assembly, they could not be appraised till five days after the distress; they were actually appraised in eight days, though clandestinely removed by the tenant in the mean time. By the common law, in the case of a pound breach, by the owner of the goods, the distrainer may have his action *de parco fracto*, or may take the goods *distrained wherever he finds them*, and impound them again, Co. Lit. 47, 6—1 Roll. Abr. 674, 12 Mod. 661. The following the goods, and making the appraisement in so short a time, under the directions of the officer who made the distress, was all that could be reasonably expected from the landlord, who ought not to be defeated of his remedy, by the unlawful act of the tenant. If not defeated as against the tenant, he could not be defeated as against the first distrainer, who had no better right than the tenant himself had unless his original lien had continued.

The judgment for a return in favour of the first distrainer, the issuing the writ of *retorno habendo*, and the taking the goods under it by the Sheriff, were

all subsequent to the second distress and appraisement, and before the distrainer could by law expose them to sale. We therefore think, there was no default in him, that the goods were in *custodia legis*, subject to his lien, and were, consequently, wrongfully taken by the defendant, under the writ of *retorno habendo*.

And, in *Frey v. Leeper*, 2 Dallas, 131, The question was, whether goods, which, after being distrained for rent, had been replevied, and delivered to the plaintiff in replevin, could be taken in execution?

*By the Court*; This point has been already determined in *Philadelphia*. The lien on the goods is discharged by the security given to the Sheriff; and as soon as they are delivered back to the plaintiff in replevin, they are open to execution, or a new distress.

On the replication of *riens in arrear*, the Jury ascertain the sum due to the avowant for rent, and are not confined to the value of the goods distrained.

Thus, in *Albright v. Pickle*, Circuit Court, Northumberland, Oct. 1805, before *Yeates, J.* in replevin for certain goods distrained, &c. The defendant avowed for rent in arrear. The plaintiff replied that no rent was in arrear.

The defendant's counsel, having established the contract to pay the rent, contended that they were entitled to recover the whole sum, with interest from the time of bringing the suit.

The plaintiff's counsel insisted that the avowant could only recover the value of the articles distrained; his remedy being by the writ of *retorno habendo*; and cited 17 Car. 2, c. 7. Bull. 58, 3 Term. Rep. 349. That if the Jury should find a sum in arrear exceeding the value of the articles distrained, a judgment thereon could not be enforced by any execution known to the law, and would therefore be of no effect.

*By the Court*; The issue joined, is, whether any, and what rent is in arrear and I do not see how the Jury can be prevented from ascertaining it; whether the verdict can be enforced by execution or otherwise, is another consideration.

The stat. 17, c. 2, c. 7, extends to cases, where a plaintiff in replevin, whose goods have been distrained for rent, is nonsuited before, or after issue joined. The statute does not alter the judgment at common law, but gives a further remedy to the avowant. On a verdict for the avowant, the Jury in that verdict ascertain the damages; and then there needs no writ of inquiry; but the judgment is entered, that the defendant have a return of the cattle or goods taken, and that he recover against the



Plaintiff £ for his damages by the jury aforesaid, in form aforesaid, assessed, and also £ for his charges and costs.

Our Act of Assembly of 21st March, 1772, pursues in many particulars, the British Statute of 11 Geo. 2, c. 19, and the 11th section of the former, is couched nearly in the same terms with the 23d sect. of the latter. The sheriff is directed to take a bond in double the value of the goods distrained, conditioned to prosecute the suit with effect, and to return the goods distrained, in case a return shall be awarded; and the same being assigned to the avowant, he may recover thereupon in his own name; "and the court where such action shall be brought, may, by a rule, give such relief to the parties upon such bond, as may be agreeable to justice and reason, and such rule shall have the nature and effect of a defeasance to such bond."

This mode of proceeding is now generally preferred, and is not affected by the former stat. of 17 Car. 2. c. 7.—Therefore it would seem, that in such a case as the present, the avowant would not be without relief, to the extent of the penalty of the Replevin Bond. He is not bound to sue out his writ of *retorno habendo*, though a judgment of return is entered for him, as a matter of course.

It is not the usage in this state, to allow interest on rent; but from the time the landlord distrains, or sues for it, it is customary for the Jury to make such allowance. The practice is right and proper in itself. Where one unreasonably and vexatiously delays another from the recovery of his just debt, the least compensation he can make, is to pay interest for the delay he has thus given.

Verdict accordingly for the rent in arrear, and interest from the time of suing out the replevin. MSS. Reports. See 2, Binney, 154.

In replevin, where the goods are delivered to the plaintiff, the court will not give him leave to discontinue. *Broom v. Fox*, March, 1800. MSS. Reports, Sup. Court.

Upon the 5th Section of the act, the following case has been decided.

*Adams v. Lacombe.*

Replevin. The material question, on the trial of this cause, was, whether the goods of a *stranger*, being removed from the premises before a distress, could be pursued and seized within the thirty days.

*Shippen*, President, in the charge to the jury, delivered it as the clear opinion of the court, that the right of pur-

suing and seizing goods after their removal, was confined to the goods of the lessee, from whom the rent was really due; and that the goods of a stranger could only be distrained while they were on the premises. 1 Dallas, 440.

The landlord is entitled to the rent due to the time of the sheriff's levying on his tenant's goods found on the premises, provided it does not exceed one year. *West's administrators v. Sink*, March, 1798. MSS. Rep. Sup. Court.

Where a landlord claims and uses certain privileges against the tenant's consent, it is incumbent on him to shew that he reserved them, otherwise he suspends the rent; so, if lessor enter into part of the lands, the whole rent is suspended. *Vaughan and others, assignees, v. Blanchard and others.* Sept. 1792. MSS. Rep. Sup. Court, and see 4 Dallas, 124, 125.

There must be an union of the land and the rent in the same person to work an extinguishment of the rent. A vested right to enter and hold the land until the payment of the rent, is not sufficient. 2 Binney, 138

Where between landlord and tenant, justices of the peace do not allow a reasonable time to the tenant to procure his testimony, the court will set aside their proceedings. *Stewart v. Martin*, July, 1791. MSS. Rep. Sup. Court.

Where a landlord on a lease from year to year, gives notice to his tenant to quit at the end of the year, but does not proceed agreeable to his notice, the tenant may be removed one year afterwards, provided no act is shewn to prove an implied renewal of the lease by the landlord after such notice. *Boggs v. Galbraith.* 1 Binney, 333.

The notice to quit, required by the landlord, and tenant, and law, must be given three months before the end of the term. *Brown v. Vanhorn.* 1 Binney, 334, (in note.)

If in proceedings between landlord and tenant, there are more than four days between the date of the justice's warrant and its return, it is cured by the tenant's appearance and making defence. *Stroup, in Error v. McClure*, July, 1808. MSS. Rep. Sup. Court. See *Bache's Manual*, vol. 1, page 214, 215.

Where proceedings between landlord and tenant are reversed, the court is not bound *ex debito justitiæ* to award restitution. *Fitch Alden v. Lee*, April, 1792. MSS. Rep. Sup. Court.

A landlord cannot support an ejectment against his lessee without a forfeiture of his lease. If lessee has infringed the covenants in the lease, or has been guilty of waste, he is punish-



1772. ble in other actions. *Penn's Lessee v. Musser*, Huntingdon, May, 1798. *Nisi Prius*, MSS. Reports.

Where a sheriff's vendee has come into possession under defendant's title since the bringing of an ejectment, he will be permitted to be made a co-de-

fendant in the suit. *Lessee of Murray v. Galbraith*. Sup. Court, Middle District, July, 1809, 2 Binney, 59.

For precedents to recover possession by the landlord, under this act, see *Graydon's Justice*, and Appendix to 1 *Bache's Manual*.

## CHAPTER DCLII.

*A SUPPLEMENT to the act, entitled An Act for the advancement of justice, and more certain administration thereof. (z)*

TO prevent and deter evil minded persons from committing the offences herein after mentioned, *Be it enacted*, That, if any person or persons, from and after the publication of this act, shall maliciously and voluntarily burn the State-house of this province, or any of the adjoining offices and buildings, or any church, meeting-house, or other building for public worship, or any academy or school-house, or library, belonging to any body politic or corporate, and shall be thereof legally convicted, every such person and persons shall suffer death, without benefit of clergy. (a)

Persons convicted of burning the State-house, &c. to suffer death.

II. *And be it further enacted*, That if any person or persons shall break and enter into any of the houses aforesaid, in the night time, with intent to commit a felony within the same, whether the felonious intent be executed or not, every such person so offending, being thereof legally convicted, shall stand in the pillory during the space of one hour, have his, her or their ears cut off, and nailed to the pillory, be publickly whipped with thirty-nine lashes on the bare back, well laid on, and be committed to the work-house or gaol of the city or county where such offender shall be convicted, during the space of twelve months. (b)

Punishment to be inflicted on persons breaking into any public building in the night.

III. *And be it further enacted*, That if any person or persons shall maliciously and voluntarily break, or take off or from the door of any inhabitant, within this province, any brass or other knocker affixed to such door, or shall maliciously or voluntarily cut, break, or otherwise destroy any leaden, tin or copper spout, or any part thereof, affixed to any such house, every person so offending, being thereof legally convicted, shall forfeit and pay the sum of twenty-five pounds for every such knocker or spout so broken or taken away, or cut, or otherwise destroyed, or be publickly whipped on his, her or their bare backs with twenty-one lashes, well laid on. (c)

Penalty on breaking off the knockers of doors, &c.

(z) For the original act, and a general reference to all the penal laws, see ante. chap. 236, and the notes there subjoined. (*Note to former edition.*)

(a) For the various subjects of arson, see ante. chap. 236, sect. 13, and the note there subjoined. The punishment of arson, or of being accessory thereto, is now, however, commuted into confinement at hard labour, post. chap. 1766, sect. 4. (*Note to former edition.*)

(b) For the general definition of bur-

glary, and its punishment, see ante chap. 236, sect. 12, and the note there subjoined. The punishment of the offence stated in this section is changed to confinement at hard labour, by virtue of the fourth section of the act of the 5th of April, 1790, post. chap. 1505. (*Note to former edition.*)

(c) The punishment of this offence is now changed to confinement at hard labour, post. chap. 1505. (*Note to former edition.*)

IV. *And be it further enacted*, That if any person or persons shall maliciously or voluntarily break, take down, destroy or deface any sign, put up by any inhabitant of this province, to denote his, her or their place of abode, occupation, business or employment, every such person or persons so offending, being thereof legally convicted, shall forfeit and pay the sum of ten pounds for every such offence, or be publickly whipped on his, her or their bare backs, with fifteen lashes, well laid on. (d) 1772. Or taking down signs.

V. *And be it further enacted*, That one moiety of the fines imposed by this act shall be, and is hereby declared to be, to and for the use of the person or persons injured, and the other moiety to and for the use of the poor of the city, borough, district or township, where the offence shall be committed. Fines how appropriated.

VI. *Provided always nevertheless*, That nothing in this act contained shall be construed to prevent the commissioners for paving and cleansing the streets of the city of Philadelphia, from taking down or removing any sign put up within the said city contrary to law. Provisō.

Passed 21st March, 1772.—Recorded A. vol. V. page 521.

(d) The punishment of this offence labour, post. chap. 1505. (Note to former edition.)

## CHAPTER DCLIV.

### *An ACT for the more easy recovery of Legacies.*

FORASMUCH as the act of general assembly, entitled *An Act for the more easy recovery of legacies* is near expiring, and requires a few, but necessary amendments, *Therefore be it enacted*, That, from and after the publication of this act, it shall and may be lawful for any person or persons, to whom any legacy or bequest of any sum or sums of money, or other goods or chattels, have been or may be made, by the last will and testament of any other person or persons, legally made, to commence, sue and prosecute an action upon the case, debt, detinue, or account-render, as the case may require; for such legacy, after it becomes due, in any of the County Courts for holding of pleas in any of the counties within this province. And if it shall appear that the legacy or legacies is or are due, and there be sufficient assets in the hands of the executors or administrators, with testaments annexed, to discharge the just debts of the testator, and the legacy or legacies bequeathed, the plaintiff or plaintiffs shall recover, with costs of suit, any law, usage or custom, to the contrary notwithstanding. Legatees may commence, sue and prosecute an action of debt, &c.

II. *Provided always*, That where it shall so happen that there are assets in the hands of any executors or administrators, with testaments annexed, to discharge all the debts of the testator, with an overplus not sufficient to discharge all the legacies which may be given, then an abatement shall be made in proportion to the legacies so given, unless it shall be otherwise provided by the will. And where any legatee or legatees are or may be under age at the time Abatement to be made, where assets not sufficient, &c.



1772. when such legacy or legacies shall become due, in such case such legatee or legatees shall and may maintain an action for their respective legacies, by guardian or next friend, as fully, amply and largely, as by law they may do in any other actions whatsoever.

Courts, where actions are commenced upon plea for want of assets, to appoint Auditors.

III. *And be it further enacted*, That the respective Courts where the said actions shall be commenced, upon the plea of the want of assets to pay all the debts and legacies, shall appoint Auditors to examine the accounts of the executors and administrators, with testaments annexed, who, after full hearing of the parties, at such times and places as by them the said Auditors shall be appointed, with notice to the parties, shall report how the accounts of the executors or administrators do stand, what assets will remain after payment of all the debts, and what part of the remainder is the proportion that ought to go towards paying of the plaintiff's legacies; for which proportion only, unless it shall be otherwise provided by the will, the Court shall then award execution upon the judgment to be had in the said suit; which judgments shall remain a security for the payment of the remainder of the said legacies and cost, when sufficient assets for the payment thereof come to the executors or administrators hands. And where any exceptions shall be taken by either of the parties to the report of the Auditors, it shall and may be lawful for the Court in which the action shall be depending, on hearing of the parties, to correct and amend any mistakes or errors which may happen in the accounts so to be reported.

No suit to be maintained, until reasonable demand made, &c.

IV. *Provided always*, That no such suit shall be maintained for any such legacy, until reasonable demand made of the executor or executors, administrator or administrators, with wills annexed, who ought to pay the same, and an offer made of two sufficient sureties to the said executor or executors, administrator or administrators aforesaid, who, if they think proper to accept thereof, shall become bound to them, the said executor or executors, administrator or administrators aforesaid, in double the sum of the legacy given, where such legacy is ascertained by the will, and where not ascertained as aforesaid, in double such sum as the person or persons shall think him, her or themselves justly entitled to, with condition underwritten, that if any part, or the whole thereof, shall at any time after appear to be wanting to discharge any debt or debts, legacy or legacies, which the said executor or executors, administrator or administrators, shall not have other assets to pay, that then he, the said legatee, will return his said legacy, or such part thereof as shall be necessary for the payment of the said debts, or the payment of a proportional part of the said legacies. And if the said executors or administrators shall not think proper to accept of such bond, then the said legatees shall file the same with the Clerk of the Court, before obtaining any process against the executor or executors, administrator or administrators; otherwise, and in default thereof, the process issued shall abate.

Costs how to be awarded, &c.

V. *And be it further enacted*, That the Justices of the Courts aforesaid respectively, upon consideration of the report of the accounts of the executors or administrators, shall, according to justice and equity, either award no cost or costs out of the testator's estate, or, in case the executors or administrators have been faulty in delaying to pay the legacy demanded, or a proportional part thereof,

without sufficient excuse, then out of the proper estate of the executor or executors, administrator or administrators, any thing herein contained to the contrary notwithstanding. 1772.

**VI.** *Provided also,* That where there are or may be several legatees, and a return of part of the said legacy sued for shall appear necessary, in such case, each legatee shall only be compelled to return a proportional part of his legacy, so as to make up the whole sum wanting. Legatees to return a proportional part.

**VII.** *Provided also,* That where no time in and by any last will and testament is limited for the payment of any such legacies, that then, and in such case, the said executors or administrators shall have the space of one year to discharge the same. Time allowed for the payment of legacies.

**VIII.** *And be it further enacted,* That an act of General Assembly, passed in the fifth year of his present Majesty's reign, entitled *An Act for the more easy recovery of legacies*, shall be, and is hereby declared to be, repealed. Former act repealed. [Chap. 529.]

**IX.** *Provided always,* That nothing in this act contained shall be deemed, taken or construed, to discontinue any suit or suits depending at and before the publication of this act, but that every such suit or suits may be prosecuted, notwithstanding the repeal of the said recited act, in the same manner as they would have been prosecuted, had the said law not been hereby repealed, but continued during the time of prosecuting to effect such suit or suits. Suits depending not to be discontinued by this act.

**[X.** *And be it enacted,* That this act shall continue in force for the term of seven years, and from thence to the end of the next session of Assembly, and no longer.] Limitation, [Made perpetual, October 9th, 1779, post. chap. 852.]

Passed 21st March, 1772.—Recorded A. vol. V. page 503. (e)

(e) For the act respecting the Probate of wills, &c. see ante. pa. 33, and the notes thereto subjoined. Since the notes to chap. 133 were printed off, the following cases have been published.

*French v. M'Ilhenny.*

The testator devised as follows: "As for such worldly estate wherewith it has pleased God to bless me in this life, I give, dispose and bequeath the same in the following manner and form—To his wife, one half of his *plantation* during her *natural life*; to his nephew S. two thirds of his *plantation*, excepting what was above to his wife already willed; also to his nephew R. one third of his *plantation*, excepting what was above willed to his wife." It was held by two judges, against the opinion of the chief justice, that the nephews took a *fee simple* in the plantation, subject to the life estate of the wife in a moiety. 2 Binney, 13.

*Havard v. Davis.*

A will in writing, of lands, may be revoked by the parol republication of a former will in writing.—And in order to ascertain whether the will republished operates as a revocation, the con-

tents may be proved by parol, if the will itself cannot be found, and the usual ground is laid for introducing the secondary evidence. Yeates, J. dissenting on the latter point, upon the circumstances of the case, 2 Binney, 406.

For the act respecting intestates' estates, see post. chap. 1740, and the notes thereto subjoined.

By the act of March 9th, 1771, (ante. chap. 635, sect. 15, pa. 338,) all gifts, grants, devises and bequests hereafter to be made of any houses, lands, tenements, rents, goods, chattels, sum or sums of money, not exceeding in the whole, including all gifts, grants, devises and bequests heretofore made, the yearly value of five hundred pounds, to the poor of any borough or township within this province, (except the townships as before excepted,) [*Northern Liberties, Moyamensing and Passyunk,*] or to any other person or persons for their use, by deed, or by the last will and testament of any person or persons, or otherwise howsoever, shall be good and available in law, and shall pass such houses, lands, tenements, rents, goods and chattels, to the Overseers of the poor, and their successors in the said trust, for the use of the said poor forever.



1772.

Legacies to corporate bodies are to be notified by the Register when the will is brought for probate, (post. chap. 1536, sect. 5.)

By an act passed March 19th, 1810, no devise or legacy in favour of a child, or other lineal descendant of any testator shall be deemed or held to lapse or become void by reason of the decease of such devisee or legatee, in the life-time of the testator, if such devisee or legatee shall leave issue surviving the testator, but such devise or legacy shall be good and available in favour of such surviving issue, with like effect, as if such devisee or legatee had survived the testator: *Provided always*, That nothing herein contained shall be construed to affect any devise or legacy contained in the last will of any testator who shall have deceased before the passing of this act: *And provided also*, That nothing herein contained shall be construed to defeat the intention of any testator, to exclude such surviving issue, or any of them.

Conformable to the old law, it had been decided, in *Robinson v. Robinson's executors*, in the Supreme Court, Dec'r, 1799, that a legatee dying before the testator his legacy is lapsed: And where a residue is devised to several, though some of them are not executors, and there are no words pointing to a tenancy in common, and one of them dies in testator's life-time, his share shall survive. MSS. Reports.

Divers devises in a will, of the same thing, the last devise shall take place. S. C.

The words goods, or moveables, in a will, may include bonds, unless there be something in the context of the whole will to restrain the construction. *Jackson v. Vanderspiegle's executor*. MSS. Rep. Sup. Court, Jan'y. 1792.

Devise of Lands to a second son and his heirs, he or they paying to a daughter £300 within three months after the expiration of a lease under which the lands were; and also £150 within three months after the death of testator's wife (to whom an annuity of £27 per annum was devised out of the said lands during life.) The legacies are vested and transmissible to representatives, though the legatee die before the day of payment. *Stone's administrators v Massey*. Sup. Court, Dec'r. 1798. MSS. Reports.

An action was brought by a residuary legatee under the act in the text, to which the defendants pleaded fully administered: And the plaintiff thereupon moved for the appointment of auditors. It was objected that the executor's accounts had already been left by consent to referees, on a former citation before the Register of wills, &c. But the Court determined that the former settlement was not conclusive, and that by the words of the act, (sect. 3.) it was intended new auditors should be appointed, *ex tempore*, upon the plea of want of assets. 1 Dallas 164.

## CHAPTER DCLV.

*An ACT to enable the owners and possessors of a certain tract of meadow land, situate in the borough of Chester, in the county of Chester, to keep their dams, banks, sluices and flood-gates, in good repair.*

Passed 21st March, 1772.—Private Act.—Recorded A. vol. V. page 488.

## CHAPTER DCLVIII.

*An ACT for explaining and better ascertaining the boundary lines of the county of Bedford. (f)*

WHEREAS by an act of General Assembly of this province, entitled *An Act for erecting a part of the county of Cumberland into a separate county*, passed in the eleventh year of the present reign, it was enacted, That all and singular the lands, lying and being within the boundaries following, that is to say; beginning where the pro-

(f) For the act erecting the county of Bedford, see ante. chap. 629, and the references thereto; and the title *Bedford county*, in the index. (Note to former edition.)

vince line crosses the Tuscarora mountain, and running along the summit of that mountain to the Gap, near the head of the Path Valley; thence with a north line to the Juniata; thence with the Juniata to the mouth of Shaver's creek; thence north-east to the line of Berks county; then along the Berks county line north-westward to the western bounds of the province; thence southward, according to the several courses of the western boundary of the province, to the south-west corner of the province; and from thence eastward, with the southern line of the province, to the place of beginning: But forasmuch as the Tuscarora mountain does not extend to the province line, and the southern boundaries aforesaid are not properly described, the lines of the county of Bedford cannot be known and run by the Trustees appointed for that purpose: To the end, therefore, that the boundaries of the said county of Bedford may be certainly known, *Be it enacted*, That the lines following, to wit, beginning where the province line crosses the North or Blue mountain, that runs between the Great and Little Coves and that part of Cumberland county called Connegocheague; and thence along the summit of the said mountain to the beginning of the Tuscarora mountain, and running along the summit of the said Tuscarora mountain to the Gap, near the head of the Path Valley; from thence a north line to the Juniata river; thence up the Juniata to the mountain that divides the Kishicocolus Valley from the Standing Stone Valley, and along the summit of that mountain to the head of the Standing Stone creek; from thence north-east to the line of Berks county; thence by Berks county line to the western bounds of the province; thence southward, according to the several courses of the western boundary of the province, to the south-west corner thereof; and from thence with other boundaries of the province to the place of beginning; shall be, and are hereby declared to be, the boundary lines of the said county of Bedford, any thing in the said recited act to the contrary notwithstanding.

1772.

Boundary lines ascertained.

Passed 21st March, 1772.—Recorded A. vol. V. page 528. (g)

(g) The boundaries described in this act include, at present, many counties. It is, however, useful to be referred to, particularly with respect to titles to lands founded on warrants issued previous to the erection of other counties.

## CHAPTER DCLX.

*An ACT for the relief of such persons, as conscientiously scruple the taking of an oath in the common form. (h)*

WHEREAS it is enacted and declared, in and by the act of General Assembly, passed in the twelfth and thirteenth years of his Majesty William the third, entitled *An Act concerning liberty of conscience*, "That no person, dwelling or residing within this province, who shall profess faith in GOD the Father, and in JESUS CHRIST, his only Son, and in the HOLY SPIRIT, one God blessed for evermore, and shall acknowledge the Holy Scriptures

(h) See ante. pa 24, chap. 115, the act concerning liberty of conscience, and a reference to the existing laws upon the subject of qualifications of witnesses. (*Note to former edition.*)



1772. “ of the Old and New Testaments to be given by divine inspiration,  
 “ and, when lawfully required, shall profess and declare that they  
 “ will live peaceably under the civil government, shall in any case  
 “ be molested or prejudiced for his or her conscientious persuasion,  
 “ but shall freely and fully enjoy his or her christian liberty, in all  
 “ respects, without molestation or interruption.” And whereas  
 many of the Protestant inhabitants of this province, who make the  
 said professions of religion, and live peaceably under the govern-  
 ment thereof, cannot, for conscience sake, take an oath in the com-  
 mon form, by laying the hand upon and kissing the book, when  
 thereto legally required, some of whom, by reason thereof, have  
 suffered imprisonment, and yet do not scruple to take an oath in the  
 manner and form herein after specified: And forasmuch as justice  
 cannot be well administered in many cases without their assistance,  
*Be it therefore enacted*, That all and all manner of crimes, offences,  
 matters, causes and things whatsoever, to be enquired of, heard,  
 tried and determined, or done or performed, by virtue of any law  
 in this province, or otherwise, shall and may be inquired of, heard,  
 tried and determined, by Judges, Justices, witnesses and inquest,  
 and all other persons qualifying themselves, according to their con-  
 scientious persuasions respectively, either by taking the solemn af-  
 firmation, or any oath in the usual and common form, by laying the  
 hand upon and kissing the book, or by lifting up the right hand, and  
 pronouncing or assenting to the following words: *I, A. B. do swear*  
*by Almighty God, the searcher of all hearts, that I will*

Persons qual-  
 ifying accord-  
 ing to their  
 conscien-  
 tious persua-  
 sions to have  
 the effect of  
 an oath,

*and that as I shall*  
*answer to God at the great day.* Which oath, so taken by persons  
 who conscientiously refuse to take an oath in the common form, shall  
 be deemed and taken in law to have the same effect with an oath  
 taken in the common form.

Penalty on  
 taking a false  
 oath.

II. *And be it further enacted*, That if any person or persons  
 shall be legally convicted of taking a false oath, in the form herein  
 particularly prescribed, every such person or persons so offending  
 shall incur and suffer the same pains, penalties, disabilities and for-  
 feitures, as persons convicted of wilful and corrupt perjury do incur  
 and suffer by the laws of Great-Britain.

III. *Provided always, nevertheless*, That nothing in this act con-  
 tained shall be held, deemed or construed, to extend to enable any  
 such person or persons to receive, take or exercise any office, judi-  
 cial or ministerial, before he or they shall take the oath or oaths to  
 the government usually taken by such officers, before they enter  
 upon the duties of their offices, in the form herein before particu-  
 larly prescribed.

Passed 21st March, 1772.—Recorded A. vol. V. page 502.

## CHAPTER DCLXII.

*A SUPPLEMENT to the act, entitled An Act against adultery and  
 fornication.*

Anre. pa. 27.  
 Chap. 122.

WHEREAS in and by the act of General Assembly, to which  
 this act is a supplement, one moiety of the fines imposed on per-

sons convicted of adultery, is given and declared to be to the use of the Governor, and the other moiety to the use of the poor; but inasmuch as it is not ascertained, by the said act, to the use of what particular poor the same moiety is intended to be applied, doubts have arisen, and the Sheriffs of several counties within this province have detained in their hands, and still detain the said moiety, for want of proper persons to discharge them, upon payment thereof: For the removal of which doubts, *Be it enacted*, That one moiety of all fines, imposed on persons convicted of adultery in and by virtue of the said act, and received by any Sheriff within this province, before the publication hereof, shall be paid to the Overseers of the poor of the city, district or township, where the offender did reside at the time of committing the fact, to the use of the poor thereof; and that one moiety of all fines, which shall hereafter be imposed on any person convicted of the said offence, by virtue of the said act, shall be to and for the use of the Governor of this province, for the time being, \* and the other moiety to the Overseers of the poor of the city, district or township, where the offender shall reside at the time of committing the fact, to the use of the poor thereof, any thing in the said act to the contrary notwithstanding.

1772.

Manner of appropriating fines for adultery.

\* Now for the use of the commonwealth.

Passed 21st March, 1772.—Recorded A. vol. V. page 521.

## CHAPTER DCLXV.

*An ACT to enable the owners of the lands, called The Pigeon Swamp, in the township of Bristol, in the county of Bucks, to dig, maintain, and keep open, a ditch through the said swamp, and to raise money to defray the expense thereof.*

Passed 21st March, 1772.—Private Act.—Recorded A. vol. V. page 512.

## CHAPTER DCLXIX.

*An ACT for prevention of frauds and perjuries.*

FOR prevention of fraudulent practices, perjuries, and subornation of perjuries, *Be it enacted*, That from and after the tenth day of April, one thousand seven hundred and seventy-two, all leases, estates, interests of freehold, or term of years, or any uncertain interest, of, in, or out of any messuages, manors, lands, tenements or hereditaments, made or created by livery and seisin only, or by parol, and not put in writing, and signed by the parties so making or creating the same, or their agents, thereunto lawfully authorized by writing, shall have the force and effect of leases or estates at will only, and shall not, either in law or equity, be deemed or taken to have any other or greater force or effect, any consideration for making any such parol leases or estates, or any former law or usage to the contrary, notwithstanding; except, nevertheless, all leases not exceeding the term of three years from the

Parol leases, &c. not put in writing, and signed by the parties to have the effect of leases at will only, &c.



1772. making thereof: And moreover, that no leases, estates or interests, either of freehold or terms of years, or any uncertain interest, of, in, to or out of any messuages, manors, lands, tenements or hereditaments, shall, at any time after the said tenth day of April, one thousand seven hundred and seventy-two, be assigned, granted or surrendered, unless it be by deed or note, in writing, signed by the party so assigning, granting or surrendering the same, or their agents, thereto lawfully authorized by writing; or by act and operation of law.

Officer signing judgments to set down the day of the month, &c.

II. *And be it further enacted*, That from and after the said tenth day of April, any Judge or officer of any of the Courts of Record within this province, that shall sign any judgments, shall, at the signing the same, without fee for doing the same, set down the day of the month and year of his so doing upon the paper, book, docket or record, which he shall sign, which day of the month and year shall be also entered upon the margin of the record where the said judgment shall be entered.

Time of judgments taking place.

III. *And be it further enacted*, That such judgments, as against purchasers *bona fide* for valuable consideration of lands, tenements or hereditaments, to be charged thereby, shall, in consideration of law, be judgments only from such time as they shall be so signed, and shall not relate to the first day of the term whereof they are entered, or the day of return of the original, or filing of the bail, bail, any law, usage, or course of any court, to the contrary notwithstanding.

Writs of *fiery facias*, &c. not binding, till delivered to the Sheriff, &c.

IV. *And be it further enacted*, That from and after the said tenth day of April, no writ of *fiery facias*, or other writ of execution, shall bind the property of the goods of the person against whom such writ of execution is sued forth, but from the time that such writ shall be delivered to the Sheriff, Under-Sheriff or Coroners, to be executed; and for the better manifestation of the said time, the Sheriff, Under-Sheriff and Coroners, their deputies and agents, shall, upon the receipt of any such writ, (without fee for doing the same) endorse on the back thereof the day of the month and year, whereon he or they received the same.

Act of the 4th of Queen Anne, relating to intestates estates, not to extend to the estates of *feme coverts*, &c.

V. *And be it further enacted*, That the act, entitled *An Act for better settling of intestates' estates*, passed in the fourth year of the reign of the late Queen Anne, or any thing therein contained, shall not be construed to extend to the estates of *feme coverts* that shall die intestate, but that their husbands may demand and have administration of their rights, credits, and other personal estates, and recover and enjoy the same, as they might have done before the making of the said act.

Passed 21st March, 1772.—Recorded A. vol. V. page 524. (i)

(i) Before the passing the act in the text, it had been adjudged, that the English Statute of frauds and perjuries, 29 Charles 2d, chap. 3, did not extend to *Pennsylvania*. 1 Dallas, 1.

The first section of this act, is copied from the three first sections of the Statute of Charles 2d. The second, third,

fourth and fifth sections of the act in the text, are copied from the 14th, 15th, 16th and 25th sections of the Statute of Charles.

Devises of lands, &c. which are regulated in a certain manner, by another part of the statute, are provided for by our own act of Assembly.



The legislature have not, however, thought proper to incorporate into our law the important provisions contained in the *fourth* and *seventh* sections of the *English Statute*. This departure from the English law, forms a striking difference in the system of the two countries; and it must be kept constantly in view by the student, that he may be enabled to distinguish how far the English decisions, previous to the revolution, on the different branches of the statute, can apply, in their principles to the law and practice of Pennsylvania.

That the decisions in Pennsylvania which follow, may be the more readily comprehended, without a reference to the Statute itself, which is in the hands of but a few, and to which the people at large, for whose benefit this edition of our Laws is more immediately intended by the legislature, cannot have access; it is deemed necessary to insert here, the two great sections of the English Statute, which are not incorporated in the law of this commonwealth.

"Sect. 4.—1. No action shall be brought whereby to charge any executor or administrator, upon any special promise, to answer damages out of his own estate;—2. Or whereby to charge the defendant, upon any special promise, to answer for the debt, default, or miscarriages of another person;—3. Or, to charge any person upon any agreement made upon consideration of marriage;—4. Or, upon any contract or sale of lands, tenements or hereditaments, or any interest in or concerning them;—5. Or, upon any agreement that is not to be performed within the space of one year from the making thereof;—6. Unless the agreement, upon which such action shall be brought, or some memorandum or note thereof shall be in writing, and signed by the party to be charged therewith, or some other person thereunto by him lawfully authorized."

Sect. 7. "All declarations or creations of trust or confidences of any lands, tenements or hereditaments, shall be manifested and proved by some writing signed by the party who is by law enabled to declare such trust, or by his last will in writing, or else they shall be utterly void and of none effect."

The first case we find reported in this state, in which this important act came into the full view of the court, is *Thomson's Lessee v. White*. 1 Dallas, 424.

Ejectment for a house and lot in *Philadelphia*. Verdict for the plaintiff; and a motion for a new trial; upon the following case:

*Dorothy Gordon*, being seized in fee of

the moiety of the premises in question, intermarried with *Lawrence Saltar*, and having lived long with him, and no prospect of children, she was desirous of making provision for an only sister of the whole blood, viz. *Mary*, one of the lessors of the plaintiff, whose husband, *John Thompson*, the other lessor, was considerably reduced in his circumstances. It then appeared, that *Mrs. Saltar*, while upon a visit, with her husband, to his brother, *John Saltar*, who resided at some distance, was taken sick; and, after a conversation relative to her estate, it was agreed by her husband and herself, that it should be settled on them for their lives, and for the life of the survivor of them, and, afterwards, that it should go to her sister, the said *Mary Thompson*, for her life, and the heirs of her body, lawfully begotten, and for want of such heirs to the children of her three sisters of the half blood. *Mr. Saltar*, accordingly, procured a deed of the above effect, to be drawn; but the second remainder being expressed to be "for the issue of the bodies of the three half sisters," one of whom was unmarried, *Mrs. Saltar*, when the instrument was read to her, thought the expression indelicate with respect to her three half sisters, and, for that reason, persisted in refusing to execute it, notwithstanding all the persuasion of her friends. Upon this refusal, her husband proposed to her, that a deed should be drawn from them to his brother *John*, who, with his wife, should reconvey the premises to him (the said *Lawrence*) and herself, as joint-tenants in fee; and he promised that, as soon as he got home, he would make his will, or by some other means, settle the estate in the manner they had before projected. *Mrs. Saltar* hesitated at this proposition; but, on her sister, *Elizabeth Saltar*, telling her that "she might rely upon him; for, if there was a man in the world, who could be trusted in such a case, it was him;" and, on her husband's requesting her to comply, declaring, that "if there was faith or truth in man, he would honestly perform what he again promised;" she executed the deed to *John Saltar*, who, with his wife, reconveyed the estate according to the previous stipulation. *Mrs. Saltar* died in the year 1781, about six months after the deeds were signed; and her husband died, intestate, and without issue, about eighteen months after her decease. *Mr. Lawrence Saltar* always, during his life, managed the estate that had been his wife's, as if it belonged to the lessors of the plaintiff. In his last sickness, indeed, when near expiring, he told his



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brother, that he was very uneasy on account of his leaving no will; and soon after this declaration he lost his reason.

The preceding facts were proved by *John Saltar*, and *Elizabeth* his wife, together with the confession of the defendant, that the lessors of the plaintiff had the title in equity, although he had it in law. There was, indeed, a contradiction, in some respect, in the case of the lessors of the plaintiff, in the testimony of *Abel James*, who related a conversation which he had with *Lawrence* and *Dorothy Saltar*, a few days before the deeds were executed, at which time, the witness said, that they had agreed to settle the estate in a different manner.

The motion for a new trial was made on two grounds; 1st, because the *parol* evidence ought not to have been admitted to go to the jury; and 2dly, because the jury gave a verdict against evidence.

*McKean*, C. J. delivered the unanimous opinion of the court in favour of the plaintiff, as follows:

In support of the first ground assigned for a new trial, it has been urged, that the *parol* proof contradicted the deed given by the witnesses themselves; that in *Pennsylvania*, lands must pass by deed, will, or some writing signed by the parties, or by the act and operation of law; that a declaration of uses must be by deed; that no *parol* evidence should be admitted respecting an agreement, or deed, which may add to, diminish, vary, or contradict, the agreement, or deed, but only to explain it; and that *John Saltar* and his wife were estopped from saying anything against their own deed.

Since the statute of frauds and perjuries in *England*, and our act of assembly, it has, indeed, been a general rule, that no estate or interest in lands shall pass but by deed, or some instrument in writing, signed by the parties; and that no *parol* proof shall be admitted to contradict, add to, diminish, or vary from a deed or writing. But it is certain that there are several exceptions to this rule, and many cases may be found in which *parol* proof has been admitted, notwithstanding writings have been signed between the parties. For instance, where a declaration is made before a deed is executed, shewing the design with which it was executed, the decisions in the court of chancery have been grounded upon *parol* proof; and in the case of *Harvey v. Harvey*, 2 Chan. Ca. 180, three successive Chancellors decreed, on the *parol* proof of a single witness, against a deed of settlement. See *Fitzg.* 213-14.

In cases of fraud and of trusts, though

no trust was declared in writing, exceptions have likewise taken place: 1 Vern. 296, *Thynn v. Thynn*. As, where an absolute deed was given, but intended to be in trust; on *parol* proof of the party's intention, the trust was decreed. 2 Vern. 288, *Hampton v. Spencer, et c contra*. And the same decision was pronounced, in the case of an agreement, or trust, being confessed by an answer, although such trust had only been declared by *parol*, ib. 294, *Bellasis v. Compton*.—Prec. Chan. 208, *Croyston v. Banes*. So, where a party is drawn in, by assurances and promises, to execute a deed, to enter into a marriage, or to do any other act, and it is stipulated that the treaty or agreement should be reduced into writing; although this should not be done, the Court, if the agreement is executed in part, will give relief. A man treating for a loan of money on a mortgage, it was agreed, that an absolute deed should be given by the mortgagor, and a deed of defeazance executed by the mortgagee; the absolute deed being given, the mortgagee refused to execute the defeazance, but the court of Chancery interposed to enforce justice agreeably to the agreement of the parties, Prec. Chan. 103-4, *Skinn.* 143, 9 Mod. 88.—In another instance, where an absolute conveyance is made for a certain sum of money, and the person to whom it is made receives interest for the money, the receipt of the interest will be admitted to explain the nature of the conveyance, Prec. Chan. 526, 1 Wils. 620. S. C. 2 Freem. 268, 285.

There are other authorities which bear a strict analogy to the case before us. A copy holder, intending to give the greatest part of his estate to his godson, and the residue to his wife, was persuaded by the latter to nominate her to the whole, declaring that she would give the godson the part designed for him: After her husband's death she refused to perform this promise, and pleaded the statute of frauds and perjuries, but the decree was against her. Again; a father, being about to make a will to provide for his younger children, is prevented by his son and heir apparent's promising him that he would make the provision for his brothers and sisters; the son and heir afterwards refused to fulfil this engagement; but, on an application to the Chancellor, the decree was also against him. So, where the issue in tail persuades the tenant in tail, not to suffer a recovery, in order to provide for younger children, upon an assurance, that he would provide for them himself, which he afterwards refuses, equity will compel him to do it. Prec. Chan. 4, 5; *Dece-*

*nish v. Baines.* 2 Freem. 34, *Chamberlaine v. Chamberlaine.*

A voluntary settlement is made by A. to B. who afterwards, without any consideration, agrees to deliver it up: This agreement shall bind in equity; for a voluntary settlement may be surrendered voluntarily. Prec. Chan. 69, *Wentworth v. Devergeny.*

The statute and act of assembly were made to prevent frauds, as well as perjuries: They should be construed liberally, and beneficially expounded for the suppression of cheats and wrongs. Thus, where there has been a fraud in gaining a conveyance from another, the grantee may be considered as a mere trustee. *Barnardist. Chan. Ca. 388, Lloyd v. Spillett.*

In the case now under consideration, *Mrs. Saltar* was seized in fee of the premises stated in the ejectment; and, had she made no conveyance, her sister, *Mary Thompson*, would have been her heir at law; but her husband, whom she loved, wished to enjoy the estate during his life, and she designed that her sister, and her sister's children should have the estate uncontrolled by her husband; with this view the deeds were executed; and, if the solemn promise and agreement of *Lawrence Saltar* is not to be enforced, his heir at law will have the estate, contrary to the intention of all parties.

The question then is, whether the engagement of *Saltar*, not being in writing, although it concerns lands of inheritance, is void by the act of assembly, for preventing frauds and perjuries?

We are of opinion, that it is not; and the parol evidence was proper to be admitted upon the trial of the cause. Here was a breach of trust in *Lawrence Saltar*, a fraud in law, which is not within the act. This is the reason of our judgment; a reason warranted by a due construction of the act, and an attentive consideration of its frame and design; which was, not only to guard against perjuries, but also against frauds. It is to be remembered, that there is no purchaser, *bona fide*, for a valuable consideration, without notice, in the present case: The defendant claims under the heir at law of *Lawrence Saltar*; he ought, therefore, to perform what *Lawrence* should have performed; and equity will consider that as done, which ought to have been done; *Grounds, &c. of Law and Eq. 75.* Every man's contract, (wherever it is possible) should, indeed, be performed as it was intended.

The numerous cases cited, as well as some determined in this court, both be-

fore, and since the revolution (several of which are in point) all turn upon the same principle, and are uniformly in favour of the plaintiff; and so many uniform, solemn decisions, ought to be always of great weight and consideration, that the law may be certain. I am glad, indeed, that the present motion has been made, because it has afforded an opportunity of full deliberation on the subject, and of settling it upon a satisfactory and permanent foundation.

With respect to the second objection, we are clearly of opinion, that the verdict was given agreeably to the weight of the evidence; and, upon the whole, direct, that judgment be entered for the plaintiff.

It will be evident that the principle that runs through this case, is this, that an act which is intended to prevent fraud, shall not itself be made the instrument of fraud; the cases therefore are numerous, that where the medium of fraud has been interposed, to prevent an agreement from being put into writing, the court will relieve notwithstanding the act of frauds and perjuries.

This class of cases, however, requires great nicety of discrimination. The court cannot, by construction, repeal the statute of frauds. And if there be no fraud interposed, it is presumed a parol contract for the sale of lands could not be enforced. And where there are general instructions for an agreement, consisting of material circumstances, to be hereafter extended more at large, and to be put into the form of an instrument, with a view to be signed by the parties, and no fraud, but the party takes advantage of the *locus penitentie*; it has been said by an able chancellor, he shall not be compelled to perform such an agreement, when he insists upon the statute of frauds. And although, in the foregoing case of *Thompson and White*, a case is cited by the Chief Justice, that an agreement confessed by answer, though only by parol, was decreed, which went upon this ground, that where the agreement was confessed, there could be no danger of perjury, which takes the case out of the mischief intended to be prevented by the act; yet it may reasonably be doubted if this be now law, unless in a case where the agreement has been in part performed.

The case of *confession*, by answer to a bill, cannot occur in *Pennsylvania*, where there is no Court of Chancery; and it has never been held that any other kind of confession or acknowledgment was sufficient. For if it were allowed to prove it by witnesses, it might introduce all the evils of perjury, which the

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1772. act was intended to prevent. But unequivocal acts, consequential to such a parol agreement, which would be a fraud upon either of the parties, and a hardship and injury to him, and more especially, where he cannot be placed in *statu quo*, if the parol agreement were not enforced, will be sufficient, through the medium of a Court and Jury, in Pennsylvania, to carry the contract into effect.

Thus, either in the cases of parol, or written contracts, *under circumstances* which would induce a Court of Chancery to decree the specific execution, the remedy here is by ejectment, or action of covenant or cases. In an ejectment against the vendor, if the contract ought to be decreed, upon the plaintiffs complying faithfully with the terms of the contract on his part, the Jury will give him a verdict and he will be put into possession as in *Thompson and White*. But the remedy is still imperfect, because they could not compel the execution of the proper title deeds, unless they were also to go further, and give conditional damages, to be released on the conveyance being made, or, if the whole purchase money be not paid, allowing it to be retained by the plaintiff until the contract be fully completed. So, where the vendee is in fault, on an action of covenant, and due tender of the title deeds, by the vendor, the Jury may give the whole purchase money in damages, with such additional damages as the case may justify.

So, in other kinds of contracts, where neither ejectment or covenant would be the proper remedy, the Jury, by giving exemplary damages, may compel the delinquent party to do justice.

Thus in the case of *Clyde v. Clyde*, Northampton county, Oct. 1791, before *M<sup>r</sup> Kean*, *C. J.* and *Yeates, J.* (MSS. reports.) In a special *assumpsit* for the privilege of a water course through the lands of defendant, the case was, *A. A.* being seized of 500 acres of land in *Allen* township, in 1772, contracted with the plaintiff to convey him one moiety thereof, and agreed that he should have the preemption of the remaining moiety within a limited time. The defendant, his brother, and one *Hugh Horne*, afterwards agreed to join with him in the purchase of the whole tract, and they stipulated with each other previously, respecting the particular parts each should have; and that as a stream of water run through the lands, those who possessed the lower places on the stream, should have the privilege of a water course through the upper places, to convey the water to their respective lands. The purchase was at length

completed from *A. A. Horner* took the upper place, the defendant the middle tract, and the plaintiff the lower, on the stream. The plaintiff, to suit his brother's convenience, and throw his lands into one compact body, exchanged with him 50 acres of land on the east side of the creek, for the same quantity on the west side. In the event, the defendant would not comply with his contract in suffering his brother to have a drain through the middle tract, though of little, or no injury to himself, but carried the water above his division line into the creek, and thereby prevented the plaintiff from watering eighteen acres of valuable meadow, which he possessed below. Repeated references were had between the brothers, to neighbours, and the defendant always promised to give his brother a right to the water, but when the matter appeared to be concluded between them, he uniformly broke his engagements. There appearing to be much vexation, and highly improper conduct on the part of the defendant, and the plaintiff's counsel agreeing to release the damages which might be found for him, in case a proper grant of the water right should be made to him by his brother, agreeably to the original contract, the jury, under the direction of the court, found a verdict for the plaintiff for £.500 damages, to compel his brother to do him justice; and see the same principle, 4 Dallas, 147-8, *anonymous*, (*John Walker v. Peter Butz*, MSS. reports.)

What shall be a *part performance* of a parol contract, so as to take it out of the act, is a subject of no little difficulty. Upon a view of the English cases on this important branch of Chancery Jurisdiction, and which form the ground work of the decisions in Pennsylvania, in similar cases, the elementary writers seem to deduce the following principles.

Where agreements have been carried partly into execution, although a controversy might be afterwards between the parties as to the terms, yet if made out satisfactorily to the court, it would be decreed, though variety of evidence might be in the case; in order that one side might not take advantage of the statute to be guilty of fraud, the Court would hold his conscience bound thereby.

But an agreement will not be considered as partly executed, unless the acts done are such as could be done with no other view or design than to perform the agreement, or, perhaps, to speak more correctly, with the view of the agreement being performed; and if it do not appear, but that the acts done,



might be done with other views, the agreement will not be taken out of the statute. Neither will acts merely introductory, or ancillary to an agreement, be considered as a part performance, although attended with expense; as, delivering an abstract, going to view the estate, fixing upon appraisers to make valuations, &c.

But if possession be delivered to the purchaser, the agreement will be considered as in part executed, especially if he expend money in building or improving, for the statute should never be so turned, construed, or used, as to protect, and be a mean of fraud. But it is said, possession must be *delivered in part performance*, for if the purchaser obtain it *wrongfully*, it will not avail him. And a possession which can be referred to a title distinct from the agreement, will not take a case out of the statute. Therefore, possession by a tenant can not be deemed a part performance. The delivery of possession by a person having possession to the person claiming under the agreement, is a strong and marked circumstance; but a tenant, of course, continues in possession, unless he has notice to quit; and the mere fact of his continuing in possession, (which is all that can be admitted, for *quo animo* he continued in possession, is not a subject of admission) cannot weigh with the court.

Whether the mere payment of part of the purchase money can be considered as a part performance, is much controverted and is deserving of great consideration. For it has been held, that nothing is a part performance, that does not put the party into a situation, that it is a *fraud* upon him if the agreement be not performed; and it is said, that payment of money cannot therefore be a part performance, for it may be repaid, and then the parties will be just as they were before, especially if it be repaid with interest. See 4 Dal-las, 152.

Notwithstanding the act in the text, it has been adjudged, that a parol partition between tenants in common, made by marking a division line on the ground, and followed by a corresponding separate possession, is good. The parol evidence had been overruled by the Court of Common Pleas in *Fayette County*; and upon error, it was urged, that the evidence ought to have been received. A parol agreement concerning lands, partly executed, is good in equity, 1 Fonbl. 164, for this is not within the statute of frauds, as the evidence of the bargain does not lie merely upon the words, but upon the fact performed. 1 Pow. Cont. 300.

On the other hand, it was contended that the statute of frauds had made a deed necessary in all cases. And it was alleged that the equity decisions in England could not be of any authority here, because we had no Court of Chancery, which was well known to the legislature when the act in the text was passed. But on the court's intimating that it had been the settled practice of the Supreme Court to proceed upon equity principles, this point was relinquished.

It was further said not to be clearly settled what part performance was sufficient in equity; but it must certainly be such as necessarily prevented fraud, which was not the case here, because a separate possession of different moieties might be had in point of fact, by tenants in common, without a complete severance of their title.

*Tilghman*, C. J. delivered the opinion of the Court, that on the plea of *non tenent insimul*, the evidence ought to have been received,—and the judgment was reversed. After stating the facts of the case, he proceeded as follows: The first objection is founded on the act of assembly, by which a writing is made necessary for the passing of any estate or interest in lands. This act of assembly, so far as it respects the point under consideration, is in substance the same as the *English* statute of frauds and perjuries; in the construction of which it has been determined that specific execution of a parol agreement shall be decreed in equity, where the agreement has been carried into effect in part only. This determination was founded on two principles; 1st, that where the parties have acted upon their agreement, there is no danger of perjury in proving it; and 2d, because it is against equity that a man should refuse to perfect an agreement, from which he had derived benefit by an execution in part. Whether the courts of Chancery have gone further than they ought, in thus indirectly giving efficacy to a parol agreement concerning land, we do not think ourselves at liberty now to enquire; because the principles I have mentioned have been adopted by this court, and long considered as the law of the land; and to question them now would shake many titles acquired under their authority. *Ebert v. Wood*, 1 Binney, 216.

So, a parol gift of lands by a father to his son, accompanied with possession, and followed by the son's making improvements on the land, is valid, notwithstanding the act in the text.

*Tilghman*, C. J. in delivering the opinion of the court, said,—Although the court are not disposed to extend the



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principles on which parol agreements concerning lands have been confirmed, farther than they have been already carried, yet they are bound by what has been decided. It has been settled, that where a parol agreement is clearly proved, in consequence of which one of the parties has taken possession, and made valuable improvements, such agreement shall be carried into effect. We see no material difference between a sale and a gift; because it certainly would be fraudulent conduct in a parent to make a gift which he knew to be void, and thus induce his child into a great expenditure of labour and money, of which he meant to reap the benefit himself. *Syler's Lessee v. Eckhart*, 1 Binney, 378.

But although, when divested of such circumstances as above stated, no interest in lands can be derived from a parol contract, yet the contract is not void in itself, so as to prevent the recovery of damages for the non-performance of it; inasmuch as the 4th section of the statute of *Charles*, is not incorporated in the system of Pennsylvania laws.

Thus, in the case of *Clyde v. Clyde*, before cited, in the course of the trial, the father of the parties was offered as a witness by the plaintiff to prove the original contract, as to the benefit of the water course being reserved to the lower tracts of land; but he was objected to by the defendant's counsel, who cited *Gilb. Ev. 108*, That a man cannot claim a water course, but by a deed under seal. But to this it was answered, and so ruled by the court, that this suit is for damages on a breach of promise, which surely may be proved by oral testimony.

And, in *Bell v. Andrews*, 4 Dallas, 152, which was an action on the case to recover damages for the breach of an agreement to sell and convey to the plaintiff, in fee simple, a tract of land in *Westmoreland* county,—The plaintiff offered parol evidence of the agreement, as stated in the declaration, of a payment of the price of the land; of the defendant's subsequent acknowledgment of the sale and payment, and of the defendant's refusal to execute a conveyance.

The defendant objected to any proof of a parol agreement for the sale of lands in fee simple, as the act in the text required expressly, that all such agreements, to have the full effect, must be put in writing, and be signed by the parties or their agents.

But, by the Court, the payment of the consideration money, may, certainly, be proved by parol evidence. The agreement being then executed by one of the

parties is not affected by the act of assembly; and it is settled that the *English* statute against frauds and perjuries was never extended to Pennsylvania. The act of assembly does not make a parol agreement for the sale of lands, void; though it restricts the operation of the agreement, as to the acquisition of an interest in the land, and no title in fee simple can be derived under it. But certainly an action will lie to recover damages for the non-performance of such an agreement.

The foregoing principle is confirmed by the case of *Ewing v. Rees*, 1 Binney, 150, and it was also held, that a written contract with an agent who had merely a parol authority, was sufficient to support an action for damages. The Chief Justice, after reciting the first section of the act in the text, there says,—It is evident that the provision extends only to the estate intended to be passed. No estate in lands shall be conveyed by one person to another, unless the agent is authorized by writing. But it is one thing to convey an estate, and another and very different thing, to make an agreement that you will convey it. It might be good policy to establish certain solemnities, without which the title of land could not be transferred; because the peace and happiness of society are promoted by the clearness and facility with which the titles of real estate may be ascertained, and by preventing those frauds and perjuries which would inevitably take place, if after a great length of time it was permitted to establish a title by parol evidence only. Whereas, an action for damages for not performing a contract, is of much less moment. The jury may give such damages as, under the circumstances of each case, appear reasonable, and these damages will often be very small; and there is less danger of perjury, because those actions are limited, so that they must be commenced in six years. I should think the case sufficiently clear, if it was taken upon the act of assembly, without any other consideration; but it is still clearer, when we turn to the *English* statute of frauds and perjuries, 29 Car. 2, c. 3. It is plain that our legislature had that statute before them, when they framed the act in question; because that part of our law which I have recited, is copied very nearly *verbatim* from the *English* law. But there is a total omission of the 4th sect. of the *English* statute, which enacts, &c. (*See this section before cited.*) It is impossible that this omission should have been accidental. It must have been intended to leave the common law unaltered, as to the redress which it affords for breach of a

parol contract, by recovery of damages. Agreeable to this construction, is the sentiment expressed by this court, in 4 Dallas, 152; although the point now in contest is different from that which was then before them. The same construction has been given in several cases at *Nisi Prius*, in which damages have been recovered on parol contracts for sale of lands—and on this point the court were unanimous.

The distinction, therefore, between the *estate or title*, and the *mere contract*, when not in writing, is settled. In *Ewing and Rees*, it is said, “the jury may give such damages, as, under the circumstances of each case appear reasonable, and these damages will *often be very small*!” But, if in the mere case of a parol contract, the jury could, in any case, be induced to give *exemplary* damages, beyond the actual loss or injury, or the difference of price on a second sale, the act in the text might then become a dead letter. If under the pressure of heavy damages, the party could, in such cases, be deprived of what is called the *locus penitentie*, and on the one hand be compelled to convey, or on the other, to accept of the purchase, by having damages against him to the amount of the contract, accordingly as the jury may view the circumstances of the case, the distinction would then be without a difference, and the absence of the 4th Section of the Statute of *Charles* a serious inconvenience. Hitherto we have not experienced that inconvenience, although the case of *Clyde and Clyde*, at first view, would seem to step upon the very line of the distinction: yet, in that case, the agreement about the water course, was dependent upon the principal agreement to purchase and divide the land, which had been *executed so far*, and the fraudulent refusal to carry the residue into effect, was justly punished in that case, so as to compel its execution. The case of *Thompson and White* was not merely a common agreement, as between vendor and vendee, but was accompanied with what the law calls a constructive fraud, and was, more particularly, the case of an actual *trust*.

By the 12th section of the act to establish the Judicial Courts of this Commonwealth, &c. passed April 13th, 1791, (post chap. 1564.) The Prothonotaries of the several Courts of the Common Pleas are empowered to sign judgments. This provision was deemed necessary, in consequence of the change of the judiciary system, by the constitution; the Prothonotaries being no longer judges of the Common Pleas. Previous to this change, in order to enable

the Prothonotaries to sign judgments, under the terms of the second section of the act in the text, the commission of Prothonotary was accompanied with a commission of Justice of the Common Pleas.

The 15th Section of the same act, directs satisfaction to be entered on judgments, when paid off, and prescribes a penalty for the neglect or refusal to enter such satisfaction, within a limited time, on tender of reasonable charges, &c.

Recognizances of bail do not bind the lands of the bail, until they are proceeded on to judgment against the bail.

*Shippen, President.* I do not find that there have been any legal decisions upon this point in *Pennsylvania*; but a general opinion has taken place, which has been carried into universal practice, that recognizances here do not bind lands, until they are proceeded upon to judgment against the bail. Hence it is, that, whenever a purchase or mortgage is made, the examination at the offices, and the certificates which are given by the Prothonotaries, are only of the judgments in force against the seller, or mortgagor, and not concerning recognizances. The practice has, indeed, been so general, that all the conveyancers and lawyers, for a long course of years, have, on such occasions, confined their inquiries to that circumstance alone; and many titles must, therefore, depend upon it, which would be shaken if a contrary construction should now be adopted.

Whether this opinion took its rise from the different situation in which the lands of this country are from those of *England*, and from their being liable to be sold for debts; or from the silence of the legislature on the subject; or from what other cause, we can but conjecture. It is remarkable, however, that when our act for the prevention of frauds was made, in the year 1772, although the legislature copied the clause in the *English* Statute relating to judgments, and was minutely exact as to the time from which they should bind lands, yet they totally omitted the clause relating to recognizances. This silence, it is true, is no abrogation of a law; but it looks as if the assembly had taken up the popular idea, that recognizances did not bind till judgments were obtained upon them, and, therefore, they thought that no particular provision was, in that respect, necessary. Upon what principle, indeed, could they else have been so careful of innocent purchasers in the one case, and not in the other?—

We may also properly take into view,



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that, long before the passing this act for the prevention of frauds, the relative dignity of judgment debts, and of those upon recognizance, had been settled by a law, directing the order of paying the debts of persons deceased; that is, 1st, Physic and funeral expenses; 2d, Debts and duties to the queen; 3d, Debts due to the proprietor and governor; 4th, *Judgments*; 5th, *Recognizances*; 6th, Rents, &c. If, however, it should be said, that is only a direction in what order debts shall be paid, without any respect to the binding nature of judgments and recognizances, it may be answered, that from the situation of lands in this country, that consideration must necessarily be included. Here lands are chattels for payment of debts; they are chattels too, in the hands of executors; and all writs of *fiери facias* direct the levy accordingly to be made, of the goods and chattels, *lands* and *tenements* of the deceased, in the hands of the executor. If then, in such a case, two writs are executed upon lands, founded, one upon a prior recognizance, and the other on a judgment subsequent to the recognizance, but prior to the judgment upon it, the Court must clearly decree a preference to the judgment creditor. This seems, indeed, to be a legislative direction as to recognizances in similar cases; for, what confusion would arise from supposing lands of deceased persons to be bound from *one time*, and the lands of *living* persons from another?

Upon the whole, we think, that great mischiefs and dangers would be imposed upon honest purchasers, if, at this time of day, we should unsettle what has been so long the general opinion and practice on this subject. *Campbell v. Richardson*. 1 Dallas, 131.

Whether the second section of the act in the text is intended merely for the benefit of *bona fide* purchasers of the lands, and not to prevent the technical relation of a judgment to the first day of the term, in a controversy between the judgment creditor and the plaintiff in a domestic attachment. See 1 Dallas, 450.

By the act of April 4th, 1798, (post chap. 1998,) judgments shall not be a

lien on lands longer than five years, unless revived by *scire facias* within that time; and the manner of serving such *scire facias* is prescribed. See ante. pa. 9.

Judgments of justices bind lands from the time of entering them on the Prothonotary's docket. Act of March 20th, 1810, sect. 10.—

As between creditors, the priority of their judgments is governed by the times of their entry, and not by relation to the preceding term. *Welsh v. Murray*. 4 Dallas, 320.

Leaving a *fiери facias* at the sheriff's office, or at the house where he usually transacts his business, is equivalent to a delivery thereof to him. *Mifflin v. Will*, March 1797, Sup. Court, MSS. Reports.

Goods taken in execution permitted to remain in the hands of the defendant—how far a subsequent execution shall prevail—The decisions on this point, in the Pennsylvania Court, and the United States Court seem contrary; but it is said, by *Shippen*, C. J. that there is an obvious and material distinction between a levy on household furniture, and on merchandise, or goods for sale. In the former case, the court has never allowed the plaintiff to lose the lien of a prior execution, because, on principles of humanity, he allowed the furniture to remain on the premises, in the possession of the defendant. But it would be going further than the reason of our decisions, and might introduce collusion and fraud, if we were to authorize, or countenance, such a practice, indiscriminately in every case. *Quere*, see 4 Dallas, 167, 208, 213, 358.

With respect to fraudulent judgments, executions, deeds, alienations, &c. see stat. 13th Eliz. chap. 5, and the act of March 20th, 1810, sect. 14.

Fraudulent assurances of lands or goods, to deceive creditors, shall be void, 50 Edw. 3, c. 6. All deeds of gift made to defraud creditors, shall be void, 3 Hen. 7, c. 4.

See also the first six sections of the stat. 27th Eliz. chap. 4, against covinous and fraudulent conveyances.

# A C T S

OF THE

## General Assembly of Pennsylvania.

Passed at a Session which commenced October 14th, 1772,  
and ended September 28th, 1773.

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RICHARD PENN, LIEUTENANT GOVERNOR.

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1773.

### CHAPTER DCLXXII.

*An ACT for emitting the sum of one hundred and fifty thousand pounds, in bills of credit, on loan, and providing a fund for the payment of public debts.*

[THE greatest part of this act is obsolete. That part of it only, which provides for the collection and recovery of balances, is necessary to be retained. The sum is not very considerable, and the whole act must, in a short period, become entirely obsolete.

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pa. 70.

£.150,000, to be struck in bills of credit. Sect. 2 prescribed their several denominations; Sect. 3 made it the duty of Trustees to prevent the fraudulent or clandestine printing of more than the prescribed quantity; Sect. 4, The signers of the bills appointed; Sect. 5, The Trustees directed to deliver the bills in parcels to the signers, who were to give receipts for the same, &c. and the signers to have a certain allowance. Sect. 6, Trustees appointed, who were to give bond, &c.—to be sworn or affirmed, &c. and by Sect. 7, the oath or affirmation to be endorsed on the bonds, and the bonds and endorsements to be recorded by the Recorder of Deeds of Philadelphia—Sect. 8. The Trustees incorporated by the name of “Trustees of the General Loan Office of the Province of Pennsylvania”—to loan the money upon mortgage—to determine the value of the lands, &c.—judge of the titles—hold the mortgaged lands to them and their successors in the trust—sell and dispose of the estates forfeited—sue and be sued, &c. Sect. 9. The Trustees not to take land security lying in any other county than where any of the Trustees reside, before a certificate from the Commissioners of such County be produced, of the value thereof—The Commissioners to take



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an oath or affirmation (prescribed) which shall be deposited by the Justice, before whom taken, with the Clerk of Sessions, to be by him filed and preserved—The certificate to be delivered to the party applying, to be by him produced to the Trustees, to be duly filed and preserved by them, for the inspection of the Assembly and their committees. Sect. 10. The Trustees, before they could be acquitted or discharged the trust, &c. to deliver up to their successors, all bills of credit, monies, securities, books of account, and other writings, relating or belonging to said Loan Office. Sect. 11. The Trustees not to lend more than £.200, nor less than £.25, to any one person, upon mortgages of lands held in fee simple, free from incumbrances, at least of treble the value of the sums lent, &c. Sect. 12. The proportion of the said £.150,000, to be loaned in each county, fixed. Sect. 13. If the respective proportions be not applied for within nine months, then the surplus to be loaned to other applicants, on mortgage as aforesaid. Sect. 14. Mortgagor allowed to discharge his mortgage at other time than that specified in the mortgage deed, by paying the whole on the first of March in any year. Sect. 15. The principal not to be sunk, but in the manner directed by the act, but the sums received before the 1st of March, 1784, to be reloaned. Sect. 16. The mortgages to be entered in books by the Trustees, and attested copies certified by them to be evidence to prove the mortgages to be made; and a prescribed oath or affirmation, to be taken by the mortgagors, to be endorsed on the mortgage, &c. Sect. 17. A bond and warrant of attorney to accompany the mortgage, in case the titles should prove defective.

Six months  
after default  
in payment,  
Trustees to  
issue their  
precept to  
the Sheriff of  
the county,  
&c.

XVIII. *Provided always nevertheless,* That until some default be made in payment of some part of the mortgage monies by the mortgagors respectively, it shall and may be lawful to and for them, and their heirs, to hold and enjoy the mortgaged premises, any thing in this act, or in their mortgaged deeds, to the contrary notwithstanding; but if default shall be made or suffered in payment of any part of the mortgage monies aforesaid, whether of the principal or interest, which the mortgagors, their heirs, executors, administrators or assigns, should or ought to pay, according to the days of payment aforesaid in their respective deeds of mortgage specified, the said trustees, after six months next following such default made as aforesaid, shall issue their precept to the Sheriff of the county where the mortgaged premises shall lie, commanding him to enter upon the messuages, lands, rents and hereditaments respectively, in the deeds of mortgage specified, and the same or such part thereof as shall be sufficient to discharge and satisfy the mortgage monies, with the interest thereof, and costs accruing on the sale, to sell, on the premises by public auction or vendue, and convey to the highest bidder, after at least thirty days public notice given of such sale, by advertising them in the newspapers, and by affixing advertisements in some of the most public places in the county; and out of the monies arising by such sale to raise the principal sums due, and to become due, with the interest, costs and charges accrued, returning the overplus, if any, to the owners of such lands and hereditaments; and also to pay and deliver the said principal sums and interest to the said trustees, for the use of the province; which said precept

the said Sheriff is hereby enjoined and required fully and impartially to execute ; for which he shall have the same fees for advertising and sale, as are allowed by law for like services where lands are sold by a writ of *venditioni exponas*, and no more.

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**XIX.** *And be it further enacted,* That the mortgagor and mortgagors of all such lands, as shall be sold by virtue of this act, shall stand and be foreclosed of and from all right of redemption of the same.

Mortgagors foreclosed, &amp;c.

**XX.** *And be it further enacted,* That the said trustees shall endorse upon each mortgage deed their receipts of all the yearly quotas paid by the respective mortgagors, distinguishing the principal sum from the interest, which they shall also note on the counter-parts to them produced, when required ; and upon the last payment thereof, the said trustees shall enter in the margin of the enrolment of the mortgage deed the time of the discharge thereof, for which they shall receive of the mortgagor six pence, and no more.

Trustees to endorse their receipts on the mortgage deeds, &amp;c.

**XXI.** And the said trustees shall keep distinct, fair and true accounts of all the sums they receive by virtue of this act, and of what they lend, emit or pay, by virtue hereof, or by orders of the Governor and Assembly, in regular day books, journals and ledgers, to be fairly kept for those purposes ; and shall exhibit the same, together with their other vouchers, to the committees of assembly, appointed for settling the public accounts, who shall adjust and settle the said accounts, and report the same to the house.

And shall keep fair and true accounts, &amp;c.

**XXIII.** *And be it further enacted,* That if it shall appear, on the settlement of the accounts of the said trustees by the said committees, and a confirmation thereof by the house of assembly, that any deficiency hath happened, by any borrower or mortgagor's not having right to the lands or tenements mortgaged, or in the value thereof, or by any other ways or means whatsoever, to pay the monies, and the interest accrued thereon, with the costs of such suits as shall be prosecuted for the same, then, and in every such case, the said trustees, having an order from the assembly for the purpose, shall draw an order on the treasurer of the county in which such deficiencies shall happen, for the payment of such deficiencies, if so much money shall then be in the treasury, and if not, the said trustees shall, and they are hereby authorized and empowered to issue their precept to the Commissioners and Assessors of the said county, enjoining them to cause the said deficiencies so happening, with such costs and charges as shall accrue and be paid by the said trustees in endeavouring to recover the same, forthwith to be assessed, raised and levied, of and upon the county, in the same manner, by the same persons, and under the same pains, penalties and forfeitures, as other county rates are by law directed to be assessed, raised and levied ; which the said Commissioners and Assessors are hereby enjoined and required to do. And the said deficiencies, when so levied, shall be paid to the said trustees, in order to replace the bills of credit so deficient.

Deficiencies happening in any county, how to be made good.

**XXIV.** *And be it further enacted,* That if the said Commissioners and Assessors shall, upon receipt of such precept, refuse or neglect, with all convenient speed, to cause to be assessed, raised and levied, all such deficiencies as are mentioned in the said pre-

Penalty on Commissioners and Assessors, for refusal or neglect.



1773. cept, in the manner herein before directed, every such Commissioner and Assessor, so refusing or neglecting, being thereof legally convicted, shall forfeit the sum of one hundred pounds for every such refusal or neglect.

Trustees to account once a year with the committees of Assembly, &c.

XXV. *And be it further enacted*, That the said trustees shall, once in every year, or oftener, exhibit their accounts aforesaid, and produce their said books and other vouchers, together with all monies remaining in their hands, unto the committees of assembly of this province, appointed for that purpose, who shall count the said money, and settle and adjust the said accounts, and make report thereof to the assembly: And all the interest money by the said trustees, from time to time received, being accounted for, and the salaries and charges allowed by this act deducted, the residue thereof shall be paid by the said trustees to the Provincial Treasurer, to be disposed of by the Governor and Assembly, and not otherwise. And the said treasurer shall have and receive, for his trouble in receiving and paying the same, ten shillings for every hundred pounds, and no more.

Trustees to keep the mortgagors up to their annual payments, &c.

XXVII. And the better to prevent inconveniences arising from indulging the mortgagors to be behind in their payments hereby directed to be made, *Be it further enacted*, That the trustees for the time being shall, and they are hereby required, to keep the mortgagors aforesaid up to their annual payments, as by this act is directed and appointed; and the committees of assembly, to be annually appointed to audit the said trustees accounts, are hereby directed not to allow of any quotas in arrear and unpaid, which have been due twelve months at the time of the settlement, but to consider and report the same as monies in the hands of the said trustees, for which the said trustees shall be accountable, excepting only such sums for which the trustees have commenced suits, or otherwise have proceeded, according to the directions of this act, for the recovery of the money due.

This act to be deemed a public act.

XXXIII. *And it is hereby declared and enacted*, That this act shall be taken and allowed, in all courts and places within this province, as a public act, and all Judges, Justices, and other persons concerned, are hereby required to take notice thereof as such, without pleading the same specially.

SECT. 22, Salary of the trustees. 26, Bills paid in to be destroyed. 28, New Trustees to be appointed in the room of those dying, refusing, &c. 29, Trustees to continue in office only four years. 30, Trustees to choose a clerk. 31, Duty and qualifications of the clerk. 32, Counterfeiters of the bills of credit to suffer death.

Passed 26th February, 1773.—Recorded A. vol. V. page 530. (k)

(k) By chap. 698, additional signers of the bills emitted were appointed. By chap. 726, when all the officers appointed under the provincial government were removed, an exception was made in the case of the trustees of the loan-office. But, by chap. 760, new trustees were appointed, the old board having refused or neglected to act; the times and places of repaying the loans

were prescribed, and the monies repaid were not to be reloaned. By chap. 727, the bills of credit emitted under the act in the text were declared a legal tender. By chap. 780, all the bills of credit issued under the provincial authority were called in, and the treasurer was authorized to exchange all the monies aforesaid that might be received by the trustees of the loan-office. By chap. 877, *post*.

a discharge of a mortgage made by one trustee of the loan-office was declared to be valid. The powers of all the trustees were vested in one of them, with a salary of one hundred and fifty pounds, (chap. 1000;) but were afterwards transferred to the State-Treasurer, chap. 1495, sect. 9. The principal and interest due on the loan-office mortgages were appropriated, (chap. 1201,) to redeem the bills emitted, (chap. 901;) but those bills were more effectually provided for, (chap. 1635.) On making a grant of twenty-six thousand six hundred and sixty-six dollars and sixty-seven cents to the Pennsylvania Hospital out of the principal and interest due to the loan-office of 1773, the treasurer was directed to transfer the securities, &c. to the Managers of that institution, who, for the purpose of collecting the

grant, were vested with the same power as the trustees, accountable, however, for the surplus that might be collected, (chap. 1682.) (*Note to former edition.*) [But the managers of the Pennsylvania Hospital, having recovered and received the amount of the grant to them, the bonds and mortgages were directed to be assigned to the State-Treasurer, by an act passed April 4th, 1805, (post. chap. 2600,) and all the duties now remaining to be performed under the act in the text are enjoined upon the State-Treasurer.] See the notes to chap. 390, ante, pa. 210.

For the laws respecting the loan-office erected in 1785, see chap. 1148, 1163, 1317, 1495, sect. 9.

For the laws respecting the loan-office erected in 1793, see chap. 1686, 1739.

## CHAPTER DCLXXIII.

*An ACT for erecting a new gaol, work-house and house of correction, in the city of Philadelphia. (1)*

WHEREAS it has been represented to the assembly, that the gaol and work-house in the city of Philadelphia are insufficient for the safe custody of the criminals and others committed to the same; and that, from the smallness of the lot of ground, the inconveniency of the buildings and inner apartments, and the increased number of persons confined therein, the health, not only of the said prisoners, but of the inhabitants of the said city, is greatly endangered: For remedy whereof, *Be it enacted*, That it shall and may be lawful to and for the Commissioners for the county of Philadelphia to borrow, from any person or persons, bodies politic or corporate, who shall be willing to lend, any sum or sums of money, which they shall think sufficient and necessary for the purposes herein after mentioned; and every lender shall receive a certificate, in writing, under the hands and seals of the said commissioners, for the payment of the sum lent, with the the interest thereof, not exceeding *six per cent. per annum*; which certificate shall be entered in a book to be kept for that purpose, and the interest money arising thereon

Commissioners for Philadelphia county empowered to borrow money, &c.

(1) By chap. 705, bills of credit to the amount of twenty-five hundred pounds were emitted, for the purpose of paying off all loans raised under this act, and of completing the new gaol and work-house.

See chap. 791, 849, indemnifying the Sheriff for confining prisoners in the old gaol, after the new gaol was finished.

See chap. 867, vesting the new gaol, &c. in the commonwealth, discharged of all trusts.

See ante. chap. 236, for a reference to the penal laws, and the existing re-

gulations respecting the gaol, and debtors' apartment. See, likewise, chap. 1505, post.

For further provision respecting the sale of the old gaol, see chap. 1154. (*Note to former edition.*)

[April 2nd, 1803, (post. chap. 2377,) a new prison or house of employment to be erected in the city of Philadelphia, and a right reserved to the counties to send convicts to the present prison. Mode of appointing the inspectors changed, and their powers increased, February 23d, 1809, post.]



1773. shall be paid, by their orders drawn on the treasurer for said county, out of the monies yearly assessed for paying the county debts.

Lenders may transfer their certificates, &c.

Manner how the money is to be appropriated.

II. *And be it further enacted*, That the said lender or lenders, his, her or their executors or administrators, may assign and transfer his, her or their certificate, with all his, her or their right and interest therein, by an endorsement thereon, to any other person or persons, and so *toties quoties*; and afterwards it shall not be in the power of the person or persons so assigning, to make void, release, or discharge the said certificate.

III. *And be it further enacted*, That the said commissioners, with the approbation of the Mayor and Recorder of the city of Philadelphia, and any two Justices of the County Court of Quarter Sessions for the county of Philadelphia, shall appropriate and apply the monies so borrowed for and towards purchasing a lot of ground, in some convenient part of the said city, and erecting thereon a commodious, strong and sufficient gaol, work-house and house of correction, with a good yard to each of them, enclosed by walls of a proper height and strength, for confining and detaining in safe custody all felons, criminals and others, who shall be committed to the said gaol and work-house by proper authority.

Commissioners empowered to sell the old gaol, &c.

IV. And, in order to secure to the said lenders the several and respective sums of money so lent, *Be it enacted*, That as soon as the said gaol, work-house and house of correction, shall be built and finished, and all the felons, criminals and others, then confined in the present gaol, work-house and house of correction, in the city of Philadelphia, shall be removed from thence to the gaol and work-house, and house of correction, hereby directed to be built (which the Sheriff of the county of Philadelphia, and the keeper of the said work-house and house of correction for the time being, are hereby enjoined and required to do) it shall and may be lawful for the said commissioners, and they are hereby enjoined and required, to grant, bargain and sell the lot or piece of ground in the city of Philadelphia, whereon the present gaol, work-house, and house of correction now stand, containing in breadth sixty-six feet, and in length two hundred and forty feet, bounded northward, with high-street, eastward with the third street from Delaware, southward with back lots, and westward with a lot formerly belonging to Thomas Rowland, with the buildings thereon erected, to any person or persons who shall be willing to purchase, and to his, her and their heirs and assigns, for ever, for the greatest sum or sums of money that can be procured for the same; and upon receipt of the said money, to pay the sums so borrowed, with the interest then due, and to pay the residue to the treasurer for the county of Philadelphia, for the use of the said county; but if the sale of the said lot and buildings shall not produce money sufficient for the purpose aforesaid, such deficiency shall be paid and satisfied by a just and rateable tax or assessment, to be laid, assessed and levied, on all estates, real and personal, within the said city and county, by the same persons, under the same pains and penalties, to be recovered in the same manner, as other county rates and taxes are or shall be laid, assessed and levied, agreeable to the directions of the act of General Assembly, passed in the eleventh year of his late Majesty George the first, entitled *An act for raising of county rates and levies*.

and pay off the sums borrowed.

Deficiency to be supplied by a tax.



V. And whereas the said lot of ground, herein before described and directed to be sold, was formerly vested in Joshua Carpenter, now deceased, but then the surviving trustee, and his heirs, to and for the use, benefit and behoof of the city and county of Philadelphia, for a place to erect a prison, work-house and house of correction, or other public use or services, as more fully appears by a certain indenture or declaration of trust, made between the said Joshua Carpenter of the one part, and the Mayor and Commonalty of the city of Philadelphia, of the other part, bearing date the twenty-second day of November, in the year of our Lord one thousand seven hundred and twenty-one: And whereas it is but just and reasonable that the person and persons, who shall become purchasers of the said lot of ground, with the appurtenances, should hold and enjoy the same, freely and clearly acquitted and discharged, as well of and from the trust and uses aforesaid, as all claims of the heirs of the said Joshua Carpenter: *Be it therefore enacted*, That all and every person and persons, who shall purchase the said lot of ground, hereby directed to be sold, or any part or parcel thereof, and receive a deed for the same, under the hands and seals of the said commissioners of the county of Philadelphia, with the approbation of the said Mayor, Recorder and Justices, shall hold and enjoy the said lot or piece of ground, or the part or parcel thereof to them respectively conveyed, in fee, and that fully and absolutely acquitted, exonerated and discharged, of and from the uses, trusts and purposes, mentioned and contained in the said recited indenture, and of and from all claims, rights, titles and demands, of the heirs of the said Joshua Carpenter, to all intents and purposes.

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Purchasers  
of the lot to  
hold the  
same in fee,  
&c.

VI. And whereas it is necessary that the lot of ground hereby directed to be purchased, for erecting the gaol, work-house and house of correction thereon, should be vested in some body, capable in law to hold the same, in trust for the said city and county: *Be it therefore enacted*, That the Commissioners for the county of Philadelphia shall, in name and in fact, be one body politic and corporate in law, and shall have perpetual succession, for the uses and purposes hereinafter particularly mentioned, and no other; and, by the name of commissioners for the county of Philadelphia, shall and may purchase the said lot of ground hereby directed to be purchased, with the approbation of the said Mayor, Recorder and Justices, and receive, take and hold the same, to the uses, intents and purposes, herein before mentioned, and may sue and be sued, plead and be impleaded, in respect to the said lot or piece of ground, or any matter or thing thereunto relating.

Commissioners  
incorporated,  
&c.

New work-  
house, &c.  
to be conduct-  
ed and sup-  
ported as by  
act of 3d  
George I.

VII. *And be it enacted*, That the said new work-house and house of correction, when built and erected, shall be under the government and direction of such person and persons, managed by the same officers, and conducted and supported in the same manner, as by a former act of assembly, passed in the third year of the reign of his late Majesty George the first, entitled *An act for erecting of houses of correction and work-houses in the respective counties of this province*,\* is directed and provided, any thing in the said act to the contrary notwithstanding.

\* Chap. 229.  
ante. pa. 101.  
and see the  
notes to chap.  
236. ante.



1773.

## CHAPTER DCLXXIV.

*An ACT for preserving the navigation in Shearman's creek, in the county of Cumberland, and to prevent the destruction of fish in the same.*

**WHEREAS** it hath been represented to the assembly, by petition from a number of the freeholders of the county of Cumberland, living near or adjoining to Shearman's creek, in said county, that the navigation of the said creek has been obstructed by a saw-mill dam, erected across the said creek, near the mouth, by a certain James Patton: Therefore, for preserving the navigation in the said creek, *Be it enacted*, That the said James Patton, and all and every person or persons claiming under him, and all and every person or persons whatsoever, having already erected any mill-dam or other obstruction across the said creek, where the same has been or can be made navigable for rafts, boats or canoes, shall make, open and leave the space of twenty feet in breadth near the middle of the said dam, at least two feet lower than any other part thereof; and for every foot that the dam is or shall be raised perpendicular from the bottom of the said creek, there shall be laid a platform, either of stone or timber, or both, with proper walls on each side, to confine the waters, which shall extend at least six feet down the stream, and of the breadth aforesaid, to form a slope for the water's gradual descent, for the easy and safe passage of boats, rafts and canoes, through the same. And that all and every person, who shall refuse or neglect to make or alter his, her or their dams, in the manner directed as aforesaid, within the term of eight months next after the passing of this act, every person so offending, contrary to the true intent and meaning of this act, being thereof legally convicted in the Court of Quarter Sessions of the county aforesaid, by the oath or affirmation of one or more witnesses, or by his or her own confession, shall forfeit and pay the sum of fifty pounds, lawful money of this government, for every such offence, or suffer six months imprisonment without bail or mainprize; one moiety of which forfeiture shall be paid to the informer or prosecutor, and the other moiety to the Overseers of the poor of the township where such offender shall reside, for the use of the poor of the said township.

**II.** *And be it further enacted*, That if any person or persons whatsoever, from and after the publication of this act, shall erect, build, set up, repair or maintain, or shall be aiding, assisting or abetting, in erecting, building, setting up, repairing or maintaining, any wear, rack, basket, fishing-dam, pound, or other device or obstruction whatsoever, within the said creek, for the taking of fish, or that shall fix or fasten any net or nets across the same, or any part thereof, whereby the fish may be obstructed from going up the same; or that shall take, destroy or spoil any spawn, fry or brood of fish, of any kind whatsoever, in any such wear, rack, basket, pound, or other device aforesaid, every such person so offending, being thereof legally convicted in manner aforesaid, shall forfeit and pay the sum of ten pounds, lawful money of this government, for every such offence, or suffer one month's imprisonment, without bail or mainprize; one moiety of which forfeiture shall be paid to the informer

Manner of  
regulating  
mill-dams,  
&c.

Penalty on  
persons re-  
fusing or  
neglecting  
to alter their  
dams, &c.

Penalty on  
erecting  
weats, &c.

or person prosecuting for the same, the other moiety to the use of the poor of the township where such offender shall reside. 1773.

III. And for the more effectual detecting and punishing offenders against this act: *Be it enacted*, That the constables of each respective township, which shall be bounded by or adjoining to any part of said creek, shall, and they are hereby enjoined and required, under the penalty of twenty shillings, to be recovered as debts not exceeding five pounds are directed by law to be recovered, and to be applied in the manner last aforesaid, carefully and diligently to inspect and view, once at least in every month, after the publication of this act, such parts of the said creek as shall be adjoining to his respective township; and having any knowledge of any offence against this act, shall forthwith give information to the next Justice of the Peace, who shall call such offender before him by warrant or summons, and if, on hearing, he shall appear to be guilty of any offence against this act, the said Justice shall take his recognizance, with one sufficient surety, for his appearance at the next Court of General Quarter Sessions of the Peace to be held for the said county.

Constables to inspect and give information of offences against this act, &c.

IV. *And be it further enacted*, That after the said dams shall be altered or built, agreeable to the true intent and meaning of this act, no person or persons whatsoever shall cast or draw any net or seine in the said creek, at or within the said opening, or within twenty perches above or below the same, under the penalty of five pounds, to be recovered and applied in manner first aforesaid.

Mill-dams, being made agreeable to this act, no person to draw a seine, &c.

V. *Provided always nevertheless*, That nothing in this act contained shall be construed or understood to deprive or hinder any person from drawing a seine or net, for the taking of fish, in any part of the said creek, except in the places last aforesaid.

Proviso.

VI. *And be it further enacted*, That the said creek, so far up as the same has been or can be made navigable for rafts, boats or canoes, shall be, and is hereby declared to be, a public highway.

Shearman's creek to be a public highway.

VII. *Provided always*, That nothing herein contained shall be deemed or taken to prevent the said James Patton, and all persons claiming under him, from erecting and maintaining the aforesaid dam in the manner herein before directed.

Passed 26th February, 1773.—Recorded A. vol. VI. page 6.

## CHAPTER DCLXXVIII.

*An ACT for erecting a part of the county of Bedford into a separate county.*

WHEREAS a great number of the inhabitants of the county of Bedford, on the west side of the Laurel Hill, have represented to the assembly of this province the great hardships they lie under, from being so remote from the present seat of judicature and the public offices: For remedy whereof, *Be it enacted*, That all and singular the lands lying within the province of Pennsylvania, and being within the boundaries following, that is to say; beginning in the province line, where the most westerly branch, commonly called the South of Great Branch of Youghiogeny River crosses the same;

Boundaries of the county.



1773. then down the easterly side of the said branch and river to the Laurel Hill ; thence along the ridge of the said hill, north-eastward, so far as it can be traced, or till it runs into the Allegheny hill ; thence along the ridge dividing the waters of Susquehanna and the Allegheny river, to the purchase line, at the head of Susquehanna ; thence due west to the limits of the province, and by the same to the place of beginning, shall be, and the same is hereby declared to be, erected into a county, henceforth to be called Westmoreland.

Its name.

Privileges granted to it.

Freeholders to meet and choose inspectors.

One Representative to be elected.

Justices of the Supreme Court to have like powers, &c.

Courts of Quarter Sessions, &c. to be held.

II. *And be it further enacted*, That the inhabitants of the said county of Westmoreland shall, at all times hereafter, have and enjoy all and singular the jurisdictions, powers, rights, liberties and privileges whatsoever, which the inhabitants of any other county, within the said province, do, may or ought to enjoy, by any charter of privileges, or the laws of this province, or by any other ways and means whatsoever, excepting only in the number of representatives to serve in general assembly of this province, in which case, *It is provided, and further enacted*, That the freeholders and inhabitants of each township within the said county, qualified by the laws of this province to elect, shall meet at some convenient place within their respective townships, at the same time the freeholders and inhabitants of the several townships of the other counties shall meet for like purpose, and proceed to choose Inspectors ; and that the freemen and inhabitants of the said county, qualified as aforesaid, shall meet at Robert Hanna's house, until the court-house shall be built for the said county, at the same time the inhabitants of the other counties shall meet for the like purpose, and proceed to elect one representative or delegate, to serve them in assembly, in the same manner, and under the same rules, regulations and penalties, as by the charter and laws of this province are directed in respect to other counties ; which said representative, when so chosen, shall be a member of the general assembly of the province of Pennsylvania, and shall sit and act as such, as fully and freely as any of the representatives for the other counties within this province do, may, can, or ought to do.

IV. *And be it further enacted*, That the Justices of the Supreme Court of this province shall have like powers, jurisdictions and authorities, within the said county of Westmoreland, as by law they are vested with, and entitled to, in the other counties within the province aforesaid ; and are hereby authorized and empowered, from time to time, to deliver the gaols of the said county, of capital or other offenders, in like manner as they are authorized to do in other the counties aforesaid.

V. *And be it further enacted*, That there shall be a competent number of Justices nominated and authorized by the Governor for the time being, by commissions, under the broad seal of the province, which said Justices, or any three of them, shall and may hold Courts of General Quarter Sessions of the Peace and Gaol Delivery, and County Courts for holding of Pleas ; and shall have all and singular the powers, rights, jurisdictions and authorities, to all intents and purposes, as other the Justices of the Courts of General Quarter Sessions, and Justices of the County Courts for holding of pleas, in



the other counties aforesaid, may, can or ought to have in their respective counties; which said courts shall sit and be held for the said county of Westmoreland, on the Tuesdays next preceding Bedford County Courts, in every of the months of January, April, July and October, at the place aforesaid, within the said county of Westmoreland, until a court-house shall be built; and when the same is built and erected in the county aforesaid, the said several Courts shall then be holden and kept at the said court-house, on the days before mentioned. And the election of a representative to serve in the General Assembly, assessors, and all other officers of the said county, who are or shall be appointed to be annually elected, shall be made and elected at or near the said court-house, at the same time, and in the same manner, as by the charter of privileges, and the laws of the province aforesaid, is directed to be done in the other counties within this province. And it shall be lawful for the freemen of the said county, for the first year, to choose three commissioners for raising county rates and levies for the said county.

1773.

Time of  
holding  
Courts.Time and  
place of elec-  
tions.

Passed 26th February, 1773.—Recorded A. vol. V. page 539. (m)

(m) The sections omitted in this act, related to the collection of taxes previously assessed in the county of Bedford. The appointment of trustees for building a Court House and Prison; the mode of raising money for that purpose; for continuing the suits, previously commenced, in the county of Bedford. The appointment of collector of excise, &c. directing the Sheriff and Coroner to attend at the first election in the new county, personally by one of them, or by deputy. The security to be given by the Sheriff, and providing for running the boundary lines, all of which is now obsolete.

Trustees appointed to purchase land, within certain prescribed limits, for erecting a Court-House and Gaol in Westmoreland County, September 13th, 1785, (chap. 1165,) and see chap. 1246, 1378, and 1808; certain contracts of the trustees confirmed.

Washington county erected March 28th, 1781, (post. chap. 920,) out of part of Westmoreland County.

Fayette County erected out of part of Westmoreland County, September 26th, 1783, (post. chap. 1045,) and another part added thereto, February 17th, 1784, (post. chap. 1057.)

Certain parts of Westmoreland and Washington counties, erected into the county of Allegheny, September 24th, 1788, (post. chap. 1348.)

Butler, Mercer, Crawford, Erie, Warren, Venango, and Armstrong Counties, erected out of certain parts of Allegheny, Westmoreland, Washington and Lycoming counties, March 12th, 1800, (post. chap. 2119.)

Indiana County erected out of certain parts of Westmoreland and Lycoming

Counties, March 30th, 1803, (post. chap. 2363.)

The boundary lines between Westmoreland and Somerset counties ascertained, March 29th, 1798, (post. chap. 1980,) and between Westmoreland and Fayette, by act of March 1st, 1806, (post. chap. 2649.)

The previous boundaries, in the new purchase, between Northumberland and Westmoreland Counties ascertained, April 8th, 1785, (post. chap. 1153, sect. 18.)

By the last enumeration, it appeared that the county of Westmoreland, according to its present boundaries, contained 4374 taxables, and with the counties of Armstrong, Indiana and Jefferson, 6413 taxables. And by the apportionment of representation made in pursuance thereof by an act passed March 21st, 1808, (post. chap. 2931.) This county sends three members to the house of representatives, and with Armstrong, Indiana and Jefferson, one member to the Senate.

By the Judiciary act of February 24th, 1806, this county, with Somerset, Cambria, Indiana and Armstrong, form the 10th Judiciary District, and the Court was directed to be held on the fourth Mondays in March, June, September and December: The term to continue one week. But by an act passed January 30th, 1810, the courts of this county are now directed to be held on the Mondays next preceding the courts in Somerset County, which will now happen on the last Mondays, save one, in the months of February, May, August and November.

This county is part of the Western District of the Supreme Court:



1773.

*Westmoreland* was divided into five election districts, by the act of Sept'r 1785, (chap. 1164.) But in consequence of the erection of *Allegheny* county, several of the districts are new modelled, by act of Sept'r 29th, 1789, (chap. 1444,) and the 4th, 5th and 6th districts are erected and described. Two additional districts erected, Sept'r 30th, 1791, (chap. 1579.)

The place of holding elections in the first district, altered, March 29th, 1792, (chap. 1605)

The 5th district enlarged, Feb'y 21st, 1801, (chap. 2176,) and Jan'y 11th, 1803, (chap. 2296.)

The place of holding elections in the second district, altered, March 12th, 1802, (chap. 2241.)

*Fairfield* and *Donegal* townships, erected into separate districts, April 4th, 1805, (chap. 2599.)

See title, *Westmoreland county*, in the Index to this edition.

## CHAPTER DCLXXX.

**A SUPPLEMENT** to the act, entitled *An Act for making the river Schuylkill navigable, and for the preservation of the fish in the said river.* (n)

**WHEREAS** many of the Commissioners appointed in and by the act of General Assembly, passed in the first year of his present Majesty's reign, entitled *An Act for making the river Schuylkill navigable, and for the preservation of the fish in the said river*, are, since the passing of the same, deceased, so that the good regulations and provisions in the said act contained cannot be enforced, to the great detriment of the trade and commerce of this province: *Be it therefore enacted*, That David Rittenhouse, Anthony Levering, John Roberts, miller, William Dewees, junior, David Thomas, James Hockley, Thomas Potts, Mark Bird, James Star, Jacob Kern, and John Pawling, junior, shall be, and they are hereby appointed Commissioners for clearing, scouring and making the river Schuylkill navigable, and for putting in execution all and every other the purposes in the said act mentioned; and that they, or a majority of them, or of the survivors of them, shall have, hold and exercise, all and every the powers, authorities, jurisdictions, rights and privileges, given and granted in and by the said recited act, to the Commissioners therein appointed, and shall be subject to the same duties, to all intents and purposes, as if they had been the Commissioners therein particularly appointed.

**II.** *And be it further enacted*, That the surviving Commissioners, appointed by the said recited act, shall, and they are hereby enjoined and required, immediately after the passing of this act, to deliver over to the Commissioners herein before appointed, all and every sum and sums of money by them collected and received, and remaining in their hands unappropriated and unapplied\* to the purposes mentioned in the said recited act, together with all books, subscriptions, and other papers, vouchers and accounts, and all tools and implements, which have been provided for opening and clearing

(n) For the original act, see ante. chap. 465; and for a general reference to the laws respecting the Schuylkill, see the note there subjoined. (Note to former edition.)

\* In the original the word is erroneously written "applied." (Note to former edition.)

Commissioners appointed for putting the act in execution;

who are to have like powers, &c.

Surviving Commissioners, formerly appointed, to deliver all monies, &c. to the present Commissioners.

the said river, and shall be in their or any of their custody, power or possession. 1773.

III. *And be it further enacted*, That so much of the act, to which this act is a supplement, as relates to the appointment of Commissioners, shall be, and is hereby declared to be, repealed. Part of a former act repealed.

IV. And whereas the Commissioners appointed in and by the said recited act, did agree with Charles Norris, Esq. late deceased, that he should be permitted and suffered, from time to time, as occasion should require, to repair, keep up and maintain a certain mill-dam, running across the eastern channel of the said river, from the main eastern shore thereof to Barbadoes Island, which, before the date of the said agreement, had been made and erected by the said Charles Norris, for the use of his mill, on condition that he, the said Charles, should and would build, erect and carry out, from the upper end of the said island, a dam, or wall, of at least twenty perches in length, and inclining in some degree to the eastern side of the said river, and of such height, as should be above the waters at all times, other than in freshes, so as to direct the waters into the western channel, and also should and would, in the building the said wall or dam, make use of the stones lying in the said western channel. And whereas, since the agreement aforesaid, the administrators of the said Charles Norris, did convey and make over the said mill, with the appurtenances, to John Bull, Esq. and it is but just and reasonable, in case the said John Bull should be permitted and suffered to hold and enjoy the advantages arising from the repairing, keeping up and maintaining the said mill-dam, that he should on his part, fulfil and perform the condition aforesaid: *Be it therefore enacted*, That the said John Bull, his heirs or assigns, shall, and he or they are hereby enjoined and required, within the space of eight months from and after the passing of this act, to build, erect and carry out the said dam or wall, of the length, height, and in the place aforesaid, according to the true intent and meaning of the said agreement, and at all times, whenever the same can be done thereafter, to keep up, support and maintain the same; and in case the said John Bull, his heirs or assigns, shall refuse or neglect to build, erect, and carry out the said wall and dam, in manner aforesaid, within the time aforesaid, or shall thereafter neglect or refuse to repair, keep up and maintain the same, at his or their own proper costs and charges, according to the true intent and meaning of the said agreement, that then, and in such case, the said agreement, and every part thereof, shall be void; and in that case, and not otherwise, it shall and may be lawful for the said Commissioners appointed by this act, or a majority of them, or of the survivors of them, to prostrate and remove the said mill-dam.

Manner how John Bull is to repair, support and maintain his mill-dam, &c.

V. *Provided always, and be it further enacted*, That if at any time hereafter the Commissioners appointed by this act, or a majority of them, or of the survivors of them, shall think it necessary to prostrate or remove the said mill-dam, it shall and may be lawful for them to apply to the Justices of the County Court of Quarter Sessions for the county of Philadelphia, who shall issue process, directed to the Sheriff of the said county, commanding him, by an inquest of twelve honest and lawful men, duly qualified according to law, to be struck by the Clerk of said court, and afterwards by

Manner of proceeding, in case the Commissioners shall think it necessary to remove the said dam.



1773. the parties, and summoned by the said Sheriff, to enquire what damages the said John Bull, his heirs or assigns, shall justly and reasonably suffer, by reason of the prostrating and removal of the said mill-dam, and to make return of the said inquest, in writing, under his hand and seal, and the hands and seals of the said inquest; and if the said Commissioners shall pay, or tender the sum of money awarded by the said inquest, as a satisfaction for the damages aforesaid, then, and not otherwise, it shall be lawful for the said Commissioners to prostrate, and totally to remove the said mill-dam, and open, and for ever thereafter to keep open, the said eastern channel of the said river, free and clear from all manner of impediments and obstructions to the navigation thereof.

Passed 26th February, 1773.—Recorded A. vol. VI. page 3.

## CHAPTER DCLXXXII.

*An ACT for vacating a part of a road in the township of the North-ern-Liberties, and for confirming a new road, laid out and made instead thereof.*

WHEREAS, by an order of the Governor and Council, on the eleventh day of January, one thousand seven hundred and twelve, a road was laid out, beginning at the north side of Vine-street, and the end of the Front-street of the city of Philadelphia, on Delaware side, and thence proceeding by the several courses and distances following, viz. north twenty-one degrees easterly, fifty-two perches, to Nathaniel Pool's house; north twenty-two degrees easterly, fifty-six perches to Daniel Pegg's porch; north twenty-one degrees easterly, sixty-one perches; north one degree west, sixty-six perches; north two degrees west, sixteen perches, over the marsh and mill creek; north twenty-two degrees west, thirty perches; and from thence by several other courses and distances, therein further set forth.

And whereas it hath been since found by the inhabitants and owners of the grounds through which the said road passes, that part of the same is inconvenient, and a more convenient road has been for many years in use, which, if established by law, will be of public advantage: *Be it therefore enacted*, That so much of the said road, so as aforesaid laid out by order of the Governor and Council, as extends from the north side of Vine-street to the end of the fifth course from the said street, shall be, and the same is hereby declared to be, made void; and that instead thereof, the road shall be of the following courses and distances, to wit; beginning at the end of Front-street, on the north side of Vine-street; from thence extending north seventeen degrees east, two hundred and fifteen perches, to a stake set in the middle of the road, two and an half perches northerly of the line of the north wall of Jacob Weaver's house; thence north twenty-seven degrees west, fifty-one perches and six tenths of a perch, to a stake set in the middle of the old road, in the line of the south wall of the house of Thomas Preston; which shall be for ever hereafter a public road and highway, of the width of sixty feet, and maintained and supported as other public roads and highways are by law directed to be maintained and supported.

Part of the  
old road  
made void.

Courses, &c.  
of the new  
road.

Passed 26th February, 1773.—Recorded A. vol. V. page 558.

# A C T S

OF THE

## General Assembly of Pennsylvania,

Passed at a Session which commenced October 14th, 1773,  
and ended September 29th, 1774.

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JOHN PENN, LIEUTENANT GOVERNOR.

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1774.

### CHAPTER DCLXXXVII.

*An ACT for regulating the buildings, keeping in repair the streets, lanes, alleys and highways, in the borough of Lancaster, and for other purposes therein mentioned.*

[1. **BUILDINGS** heretofore erected, that encroach, &c. not to be deemed nuisances; but the owners shall not rebuild on streets, lanes, or alleys encroached upon. 2. No foundation of any party wall, &c. to be laid by any person, before applying to the Regulators, who are to be appointed by the Burgesses—the first builder to be re-imbursed one moiety. 3. Penalty of £. 5, for laying the foundation of a party wall before view. 4. Persons aggrieved may appeal to the next Sessions. 5. Regulators to receive 5s. each for their trouble. 6. Regulators to regulate partition fences, which shall be repaired at the equal costs of the parties, &c. 7. Freeholders to choose Supervisors and Assessors, on the third Saturday in March, yearly, and the penalty for refusing to serve. 8. Five days previous notice of the election to be given. 9. Supervisors and Assessors to lay a limited tax, first taking a prescribed oath or affirmation, to be administered by the Burgesses, or a Justice, who shall certify the same to the Clerk of the Sessions, to be filed among the records of his office. 10. Supervisors or Assessors, dying, refusing, or neglecting to serve, others to be appointed by the Burgesses and Assistants, and any one or more Justices of the county—Compensation to Supervisors and Assessors. 11. Before collection, the tax to be allowed by the Burgesses, or one of them, and one or more Justices of the county; appeal therefrom, and how to be collected. 12. Goods of tenants, &c. liable to be distrained for the tax, 13—which tenants may deduct out of their rents, provided no

[Printed at large vol. 1. folio. pa. 675. vol. 2. 8vo. pa. 99.]

See chap. 306. and the notes thereto subjoined, and the act to establish a nightly watch, chap. 1617.



1774. agreement to the contrary. 14. Supervisors to repair the streets, &c. 15. And may enter upon adjoining lands, to cut drains or ditches for carrying off the water, &c. and £. 5, penalty for stopping them up by the owners of lots. 16. £. 3 penalty on Supervisors for neglect of duty, with appeal to the next Sessions. 17. Supervisors to produce fair and just accounts to the Burgesses, &c. who are to adjust and settle the same—The Supervisor, if aggrieved, first paying the balance in his hands, may appeal to the next Sessions, &c. 18. The borough of Lancaster to be a distinct district, &c. 19. Justices of the Peace empowered to act in all matters appertaining to their office, in the borough, though rateable within the same; 20—Except on an appeal to the Sessions. 21. Penalty on persons casting dirt, earth, &c. from their improvements, into any public street, and not removing the same upon notice; 22. And on persons laying shavings, ashes, dung, &c. on any pavement, &c.—23. Or casting rubbish, &c. in any street—24. And on distillers discharging nauseous liquor, so as to run through the streets, &c.—25. And on persons leaving carrion, &c. on any uninclosed grounds within the borough, or near the streets, &c.—26. Or for obstructing the common sewers—27. Or making pavement or foot-way, &c. contrary to the directions of the Regulators, &c. 28. Regulations respecting encroachments by cellar doors, &c. 29. Owners of porches, &c. exceeding the limitation to be assessed, at discretion of the Burgesses, &c. till they are reduced or taken away. 30. Penalty on damaging lamps, posts, &c.—31. Or removing or damaging the pipes or trunks for conveying water into the borough. 32. £. 10 penalty for keeping more than twenty-five pounds of powder in any house, shop, &c. 33. Mode of recovering the penalties prescribed. 34. The act relating to public roads and highways not to extend to the borough. 35. Persons sued or prosecuted under this act, may plead the general issue, and give the act in evidence, &c.]

Passed 22d January, 1774.—Recorded A. vol. VI. page 15. (o)

(o) The borough corporation re-established, June 19th, 1777, (post. chap. 748.)

## CHAPTER DCXCI.

*An ACT to oblige the Trustees and Assignees of insolvent debtors to execute their trusts. (p)*

WHEREAS many persons, finding themselves incapable of discharging their just debts, have, by their deeds and conveyances, duly executed, conveyed and assigned over all their lands, tenements, goods, chattels and effects, to Trustees in the said deeds mentioned, in trust, to sell and dispose thereof, and to apply and appropriate the monies, arising from such sales, towards payment of their

(p) For a general reference to the the notes thereto subjoined, pa. 189. laws and adjudications respecting insolvent debtors, see ante, chap. 315, and (Note to former edition.)

said debts, in proportion to the demands of their several and respective creditors: And whereas many of the said Trustees, regardless of their said trusts, have neglected to perform and execute the same, and to pay to the creditors of such insolvents such monies and effects as have come to their hands, under and in pursuance thereof, to the great injury of the said creditors; *Be it therefore enacted*, That where any insolvent debtor or debtors have before conveyed and assigned, or shall, after the passing of this act, convey and assign, by his, her or their deed or conveyance, duly executed, his, her or their lands, tenements, goods, chattels or effects, to a Trustee or Trustees, in trust, for the use of his, her or their creditors, and the said Trustee or Trustees, or his or their executors or administrators, shall have neglected or refused to perform and execute their said trust, it shall and may be lawful for any creditor or creditors of such insolvent debtors to petition any County Court of Common Pleas within this province, setting forth the circumstances of the case, and, upon proof made of such assignment, the acceptance, undertaking or entering upon the execution of the trust therein contained, by the said Trustee or Trustees, or any of them, and his or their neglect or refusal to execute the same, and every part thereof, according to the true intent and meaning of such conveyance and assignment, the said Court shall, and they are hereby authorised and required to nominate and appoint three or more judicious men as Commissioners, who, or a majority of them, shall audit, settle, and finally adjust the accounts of such Trustee or Trustees, his or their executors or administrators, as well as the debts and demands of the said petitioner or petitioners, and all of the other creditors of such insolvent, and to settle and finally determine the shares and proportions, which each and every such creditor or creditors is justly entitled to, of the said insolvent's estate, as well real as personal, in the hands and possession of the said Trustee or Trustees, or his or their executors or administrators, and of such which ought to be in their hands, upon a true and faithful execution of their said trust, and to make a report of their proceedings to the said Court, at such day or days as the said Court shall from time to time appoint; and the said Court shall make such allowance for their trouble to the said Commissioners, out of the estate of the said insolvents, as shall be just and reasonable.

Trustees of insolvent debtors neglecting or refusing to execute their trust, Court of Common Pleas, on petition, to appoint Commissioners, &c.

II. *And be it further enacted*, That the said Commissioners, or a majority of them, shall be, and they are hereby, authorized and empowered to call before them the said Trustee or Trustees, his or their executors or administrators, and to compel them to exhibit just and true accounts of all lands, tenements, goods, chattels, monies, debts and effects, which have come to their hands in virtue of such conveyances and assignments; and also to call before them, and to examine, on oath or affirmation, such persons as they shall think proper, touching the same, as well as concerning any debts or demands which shall be claimed or made by any creditor or creditors of such insolvents; and in case such Trustee or Trustees, or his or their executors or administrators, shall neglect or refuse to appear, or to exhibit his or their accounts as aforesaid, or if any such witnesses shall refuse or neglect to appear, or

Commissioners empowered to compel such Trustees, &c. to exhibit just and true accounts, &c.



1774. to be examined as aforesaid, it shall be lawful for the said Commissioners, or a majority of them, to cause them to be apprehended by their warrant, directed to the sheriff of the proper county, and to commit the delinquents to the common gaol, there to remain, without bail or main-prize, until they shall comply with the directions of this act.

Trustees,  
&c. being ag-  
grieved may  
petition to  
be re-heard  
by the Court,  
&c.

III. *And be it further enacted*, That if any of the said Trustees, or their executors or administrators, shall conceive themselves aggrieved in any article or articles, or particular matters or things, in the account settled and returned to the said Court by the said Commissioners, and shall by his or their petition, particularly mentioning the said articles, or particular matters and things, pray to be re-heard by the said Court, the Justices thereof shall proceed to inquire into, hear and determine the same according to law and justice, and shall thereupon, or upon the report returned as aforesaid, order and adjudge the said Trustee or Trustees, his or their executors or administrators, forthwith to satisfy and pay to each and every creditor and creditors of such insolvent debtors, his just and reasonable dividend and proportion.

Passed 22d January, 1774.—Recorded A. vol. VI. page 29.

## CHAPTER DCXCII.

*An ACT for regulating the fishery in the river Connestogoe, in the county of Lancaster.*

[Supplement  
to this act,  
October 4th,  
1788. (chap.  
1366.) Wit-  
mer's bridge,  
September  
22d, 1787.  
(chap. 1302.)  
Navigation  
of March  
17th, 1806.  
(chap. 2661.)  
A further  
Supplement  
March 7th,  
1810.  
ante. chap.  
527.]  
Manner of  
erecting 1  
mill-dams  
below the  
mouth of  
Muddy  
creek, &c.

WHEREAS it hath been represented to the Assembly, by petition from a number of the freeholders of the county of Lancaster, that live on or near the river Connestogoe, that their ancestors, themselves, and the adjacent inhabitants, have formerly enjoyed great advantages from the fishery in the same river, but that the petitioners and others have, for some time past, been in great measure deprived of this benefit, from divers persons having erected dams across the said river, to the almost total obstruction of the fish running up the same: Wherefore, for remedying the mischiefs aforesaid, *Be it enacted*, That all and every person and persons whatsoever, having already erected, or that shall hereafter erect, any mill-dam or other obstruction across the said river, below the mouth of Muddy creek, shall make, open and leave, the space of ten feet in breadth near the end of said dam, at least fourteen inches lower than any other part thereof, as far up the said river as the mouth of Cocollico creek, and above that to the mouth of Muddy creek, at least five feet in breadth, and fourteen inches lower, near the end of said dam, than any other part thereof, so that there be at least twelve inches depth of water, during the months of March, April, and May, in every year, constantly running through the same; and for every foot that the dam is or shall be raised perpendicular from the bottom of the said river, there shall be laid a platform, either of stone or timber, or of both, with proper walls on each side, to confine the waters, which shall extend at least five feet down the stream, and of the breadth aforesaid, to form a slope for the water's gradual descent; and that all and every person and

persons, who shall refuse or neglect to make or alter his, her or their dams, in the manner directed as aforesaid, within the term of one year next after this act shall be in force, every such person, so offending, contrary to the true intent and meaning of this act, being legally convicted thereof, by the oath or affirmation of one or more witnesses, or by his or her own confession, shall forfeit and pay the sum of one hundred pounds lawful money of this government, for every such offence, or suffer twelve months imprisonment, without bail or main-prize; one moiety of which forfeiture shall be paid to the informer or prosecutor, and the other moiety to the Overseers of the poor of the township, where such offender shall reside, for the use of the poor of the said township. 1774.

II. *And be it further enacted*, That if any person or persons whatsoever, from and after this act shall be in force, shall erect build, set up, repair or maintain, or shall be aiding, assisting or abetting, in erecting, building, setting up, repairing or maintaining, any wear, rack, basket, fishing-dam, pound, or other device or obstruction whatsoever, within the said river, below the places aforesaid, for the taking of fish; or that shall fix or fasten any net or nets across the same, or any part thereof, whereby the fish may be obstructed from going up the same; or that shall take, destroy or spoil, any spawn, fry or brood of fish, of any kind whatsoever, in any such wear, rack, basket, pound, or other device aforesaid, every such person, so offending, being thereof legally convicted in manner aforesaid, shall forfeit and pay the sum of fifty pounds,\* lawful money of this government, for every such offence, or suffer six months imprisonment, without bail or main-prize; one moiety of which forfeiture shall be paid to the informer or person who shall prosecute for the same, the other moiety to the use of the poor of the township, where such offender shall reside. Penalty on erecting weirs, &c.

III. *And for the more effectual detecting and punishing offenders against this act*, *Be it enacted*, That the Constables of each respective township, which shall be bounded by or adjoining to any part of the said river, shall, and they are hereby enjoined and required, under the penalty of five pounds, to be recovered as debts not exceeding five pounds are directed by law to be recovered, and to be applied in the manner last aforesaid, carefully and diligently to inspect and view, once at least in every month after this act shall be in force, such parts of the said river, as shall be adjoining to his respective township; and having any knowledge of any offence against this act, he shall forthwith give information to the next Justice of the Peace, who shall call such offender before him, by warrant or summons, and if, on hearing, he shall appear to be guilty of any offence against this act, the said justice shall take his recognizance, with one sufficient surety, for his appearance at the next Court of General Quarter Sessions of the Peace, to be held for the said county. \* [This part of the section, repealed, October 4th, 1788. (chap. 1366.) Constables to inspect, and give information of offences against this act, &c.]

V. *Provided always nevertheless*, That nothing in this act contained shall be construed or understood to deprive or hinder any person from drawing a seine or net, for the taking of fish, in any part of the said river, except in the places last aforesaid.

Passed 22d January 1774.—Recorded A. vol. VI. page 43.



# A C T S

OF THE

## General Assembly of Pennsylvania.

Passed at a Session which commenced October 14th, 1774,  
and ended March 18th, 1775.

1774.

JOHN PENN, LIEUTENANT GOVERNOR.

### CHAPTER DCCI.

*An ACT to prevent frauds in the packing and preserving of shad  
and herring for exportation.*

[The act for  
regulating  
the gauging  
of casks, ante.  
154. chap.  
260.  
And see a  
supplement  
to this act  
passed March  
19th, 1810.]  
Shad and  
herring for  
exportation  
shall be  
sound and  
merchanta-  
ble, well  
packed, &c.

Every per-  
son packing  
shad or her-  
ring for sale,  
to brand his  
name on each  
cask.

No person to  
export shad

**WHEREAS** the exportation of shad and herring to foreign markets is likely to become a considerable branch of the trade of this province, and it is therefore necessary that they be packed and salted in sound and merchantable casks, and undergo the inspection of some judicious person, before they are suffered to be exported: *Be it therefore enacted*, That all shad and herring, designed for exportation, from and after the first day of March next ensuing the publication of this act, shall be sound and merchantable, well packed and well secured, with a proper quantity of salt and pickle, in tight casks, made of good, sound, well seasoned white oak timber, which shall contain as follows, to wit, the barrel thirty-one gallons and an half, wine measure, and the half barrel sixteen gallons. (q)

**II.** *And be it further enacted*, That every person who shall pack, or cause to be packed or cured, any shad or herring for sale, shall cause his brand mark, containing the initial letter of his christian name, and his surname at length, to be branded in a plain and distinct manner on every cask so packed for sale, under the penalty of five shillings

**III.** *And be it enacted*, That no merchant or person whatsoever shall lade or ship any shad or herring for exportation out of this

(q) By an act passed the 5th of March, 1787, chap. 1254, it is provided, that the casks used for packing shad and herring, designed for exportation, shall be as follows: the barrel twenty-eight gallons, and the half barrel fourteen gallons, wine measure. (Note to former edition.)

province before he shall first submit the same to the view and examination of the officer, or his deputy, appointed by the direction of this act, who shall search the same, by opening, unpacking and repacking thereof, in order to judge of the soundness and true package of the shad and herring, as well as the contents of the cask; and if the said officer, or his deputy, shall find the said shad or herring to be merchantable, and the casks to contain, the barrel thirty-one gallons and an half, and the half barrel sixteen gallons, and made of sound, well seasoned timber, according to the directions of this act, he shall, after packing, or repacking and heading, brand every such barrel and half barrel on the quarter with a provincial brand mark, which the said officer shall have and provide for that purpose, sufficient to impress, in a fair and distinguishable manner, the arms of the province of Pennsylvania, as in the margin. (r)

1774.

or herring, before submitting the same to the examination of the officer, &c.

IV. *Provided always nevertheless,* That if any dispute shall happen between the said officer and possessor of such shad or herring, concerning the soundness or package of the same, or the soundness or contents of the cask, it shall be lawful for any Magistrate of the city or county where the said dispute arises, upon application to him made, and he is hereby required to issue his warrant to two indifferent judicious persons of skill and integrity, to view and search the said shad or herring, together with the cask in which they are contained, and make report forthwith, according as they find the same, and the said Magistrate is hereby empowered and required to give judgment accordingly: And in case the said shad or herring shall be found unfit for exportation, the said Magistrate shall order them not to be exported, under the penalty of forfeiting all such shad or herring; and shall also award the owner or possessor to pay the said officer two shillings and six-pence *per* cask, for all such shad or herring as shall be judged not fit for exportation as aforesaid, with reasonable charges; but in case the said shad or herring, upon trial, shall be found good and merchantable according to the direction of this act, the charges of prosecution shall be paid by the officer.

Disputes concerning the soundness or package, &c. how to be determined.

V. *And be it enacted,* That the officer hereafter appointed, or to be appointed, or his deputy, shall have and receive, for the viewing, searching and packing, repacking, heading and branding of every barrel of shad or herring, eighteen pence, and for every half barrel one shilling, and no more; to be paid, one half by the buyer or shipper, and the other half by the seller. (s)

Officer's fee for packing, &c.

VI. *And be it enacted,* That the said officer, or his deputy, shall have full power and authority, by virtue of this act, and without any further or other warrant, to enter on board any ship, sloop or vessel whatsoever, lying or being in any port or place in this province, to search for and make discovery of any shad or herring shipped for exportation; and if the owner or possessor, or their servants or others, shall deny him or them entrance, or if the said officer or his

Officer empowered to enter ships, &c.

(r) The state arms are, of course, substituted for the provincial arms, since the revolution. (Note to former edition.)

(s) See chap. 1852, where the fee of the Inspector of salt provisions is made ten cents per barrel. (Note to former edition.)



1774. deputies, shall be any way molested in making such discovery as aforesaid, every such person shall forfeit and pay the sum of ten pounds; or if any person shall ship off any cask or casks of shad or herring, not branded with the provincial brand mark as aforesaid, every such person, so offending, shall forfeit and pay the sum of ten shillings for every cask so shipped.

Penalty on officer's trading in shad or herring.

VII. *Provided always*, That the officer herein appointed, his deputies, or any other person or persons, to be appointed in their or either of their places or stead, shall not, during his or their office, by him or themselves, or by any other person to his or their use, or by his or their procurement, vend, barter, sell, exchange or trade in shad or herring, under the penalty of fifty pounds. And the person or persons, duly convicted of any such offence against this act, shall be and are hereby disabled from acting thereafter in their respective offices.

William Milnor appointed the officer;

VIII. *And be it further enacted*, That William Milnor shall be and is hereby appointed the said officer for viewing, searching, packing or repacking, and branding as aforesaid, all shad or herring intended for exportation, according to the directions of this act. And if the said William Milnor, or other person hereafter appointed to be the officer aforesaid shall by any accident be rendered incapable, or neglect to execute the said office, or shall die, then and so often, and from time to time, it shall and may be lawful to and for the Mayor, together with any two Aldermen of the city of Philadelphia, to supply his place by some other fit and capable person, who shall thereupon be the officer for putting this act in execution, until the end of the next sitting of the Assembly, and no longer. But before the said William Milnor, or any other person so to be appointed the officer aforesaid, shall do any thing in the execution of his office, he shall first make oath or affirmation, before any Justice of the Peace of any county in this province, faithfully and impartially to perform his duty and trust, to the best of his capacity, according to the direction of this act. (t)

Who is to make oath or affirmation;

and may appoint deputies.

IX. *And be it enacted*, That the said William Milnor, or other person appointed the officer aforesaid, is hereby empowered to appoint deputies in the respective counties of Philadelphia, Bucks and Chester (for whom he or they shall be accountable) which said deputies are hereby fully empowered to act as deputy officers for the viewing, searching, packing and branding of shad and herring, in manner aforesaid, in their respective counties, to all intents and purposes, as fully as the said William Milnor could do by virtue of this act, and shall take the like oath or affirmation as their principal is hereby directed to take, previous to their entering on the execution of their said offices.

Penalty on counterfeiting the brand mark.

X. *And be it enacted*, That if any person or persons shall counterfeit the said provincial brand mark, or impress or brand such counterfeit on any cask of shad or herring, he, she or they, being thereof legally convicted, shall for the first offence forfeit and pay the sum of fifty pounds, and for the second and every other such

(t) The appointment is now vested by the constitution in the Governor. (Note to former edition.)

offence, the offender shall be committed to gaol, and sentenced to the pillory, there to stand one hour, on a market day, in any city, borough or town, of the respective counties aforesaid, where the fact shall be committed. 1774.  
Altered by the existing penal laws.

**XI.** *And be it enacted,* That all and singular the fines, forfeitures and penalties, in and by this act set and appointed, shall be paid, one half thereof to the informer, or person who shall sue for the same, and the other half to the Overseers of the poor of the city, township or place, where the offence shall be committed; and shall be recovered, if they do not exceed five pounds, as debts not exceeding five pounds are usually recovered; and if above five pounds, shall be sued for and recovered by bill, plaint or information, in any Court of Record within this province, wherein no essoin, protection or wager of law, nor any more than one imparlance, shall be allowed. Appropriation of the fines, and how to be recovered.

Passed 24th December, 1774.—Recorded A. vol. VI. page 52.

## CHAPTER DCCIII.

*An ACT to suppress the disorderly practice of firing guns, &c. on the times therein mentioned. (u)*

**WHEREAS** a disorderly practice prevails in many parts of this province, of firing guns at or near new-year's day, which is frequently attended with much mischief, and greatly disturbs the public peace: For remedy whereof for the future, *Be it enacted,* That if, after the publication of this act, any person or persons shall, on any thirty-first day of December, or first or second day of January, in every year, wantonly, and without reasonable occasion, discharge and fire off any hand-gun, pistol or other fire-arms, or shall cast, throw or fire any squibs, rockets or other fire-works, within the inhabited parts of this province, to the disturbance of any of his Majesty's subjects there inhabiting and being, every such person so offending, and being thereof convicted before any one Justice of the Peace of the county, or Mayor or other head officer, a Justice of Peace of any city or town corporate, where such offence shall be committed, either by confession of the party so offending, or the oath or affirmation of one or more credible witness (which oath or affirmation the said Justice or other officer aforesaid is hereby empowered and required to administer) shall for every such offence forfeit, for the use of the poor of the township or district where such offender lives, the sum of ten shillings, to be levied by distress and sale of the offender's goods and chattels, by warrant, under the hand and seal of the Justice or other officer before whom such offenders shall be convicted, returning the overplus, if any, to the owner, the reasonable charge of distraining being first deducted; and for want of such distress, such offender shall be committed to prison for the space of five days, without bail or main-prize. Penalty on persons discharging any gun, &c. on the 31st of December, &c.

(u) See the acts respecting the Corporation, chap. 1333. (*Note to former edition.*)



1774.

Penalty on  
housekeep-  
ers permit-  
ting guns,  
&c. to be  
fired off at  
their houses.

*II. And be it further enacted,* That if any person or persons, after the publication of this act, shall willingly permit or suffer, within the time aforesaid, any person or persons to discharge or fire off, at his or her house, any hand-gun, pistol, or other fire-arms, or to cast, throw or fire any squibs, rockets, or other fire-works, as aforesaid, every person so as aforesaid offending, and being thereof convicted in manner aforesaid, shall for every such offence forfeit and pay, for the use aforesaid, the sum of twenty shillings, to be recovered in manner aforesaid.

Constables  
having  
knowledge of  
any offences  
against this  
act, to pre-  
sent the same  
on oath or  
affirmation.

*III. And be it further enacted,* That the Constable of each respective city, borough, township or place, in every county of this province, having any knowledge of any offences against this act, shall, and he is hereby required, under the penalty of twenty shillings, to present, on oath or affirmation, every such offence to one of the next Justices of the Peace of their respective counties, or before the Justices of the General Quarter Sessions of the Peace for the same county, together with the name or names of all such offenders, that they may be tried, agreeable to the directions of this act.

Persons ag-  
grieved may  
appeal, &c.

*IV. Provided always,* That if any person shall conceive him or herself aggrieved by the judgment of any such Justice, he or she may appeal to the next County Court of Quarter Sessions of the said county, who shall, on the petition of the party, take such order therein, as to them shall appear just and reasonable, and the same shall be conclusive to all parties.

Limitation  
of prosecu-  
tion.

*V. Provided always,* That no person or persons shall be prosecuted or troubled for any offence against this act, unless the same be prosecuted within four months after the offence committed.

Passed 24th December, 1774.—Recorded A. vol. VI. page 55.

## CHAPTER DCCIV.

*A SUPPLEMENT to the act, entitled An Act for acknowledging and recording of deeds. (x)*

Deeds and  
conveyances  
of lands, &c.  
to be ac-  
knowledge  
or proved be-  
fore one of  
the Judges  
of the Su-  
preme Court,

**WHEREAS** by the different and secret ways of conveying lands, tenements and hereditaments, such as are ill disposed, have it in their power to commit frauds, by means whereof divers persons may be injured in their purchases and mortgages by prior and secret conveyances, and fraudulent incumbrances: For remedy whereof, *Be it enacted,* That all deeds and conveyances, which, from and after the publication hereof, shall be made and executed within this province, of or concerning any lands, tenements or hereditaments, in this province, or whereby the same may be any way affected in law or equity, shall be acknowledged by one of the grant-ors or bargainors, or proved by one or more of the subscribing wit-

(.) For a general reference to all the laws that have been passed, and to various cases that have been adjudged relative to the acknowledgment, pro-

bate, and recording of deeds, see ante chap. 208, and the notes there subjoined, pa. 96. (*Note to former edition.*)

nesses to such deed, before one of the Judges of the Supreme Court, or before one of the Justices of the Court of Common Pleas of the county where the lands conveyed lie, and shall be recorded in the office for recording of deeds in the county where such lands or hereditaments are lying and being, within six months after the execution of such deeds or conveyances; and that every such deed and conveyance, that shall at any time after the publication hereof be made and executed, and which shall not be proved and recorded as aforesaid, shall be adjudged fraudulent, and void against any subsequent purchaser or mortgagee for valuable consideration, unless such deed or conveyance be recorded as aforesaid, before the proving and recording of the deed or conveyance under which such subsequent purchaser or mortgagee shall claim.

1774,

or Justices of  
Common  
Pleas, and  
recorded  
within six  
months, &c.

II. *And be it further enacted*, That all such deeds and conveyances, which shall be made and executed out of this province, after the publication of this act, and acknowledged or proved in manner as directed by the laws heretofore for that purpose made, or proved by one or more of the subscribing witnesses, before any Supreme Judge of this province, shall be recorded in the office for the recording of deeds in the county where the lands and hereditaments specified in such deed or deeds do lie, within the space of twelve months after the execution thereof, otherwise every such deed or conveyance shall be adjudged fraudulent, and void against any subsequent purchaser or mortgagee for valuable consideration, unless such deed or conveyance be recorded as aforesaid, before the proving and recording of the deed or conveyance under which such subsequent purchaser or mortgagee shall claim.

Deeds, &c.  
made out of  
this province,  
and acknowledged  
or proved, to be  
recorded within  
twelve months, &c.

III. *Provided always, and be it further enacted*, That this act shall not extend to any lease not exceeding twenty-one years, where the actual possession and occupation goeth along with the lease, any thing in this act to the contrary notwithstanding.

Leases not  
exceeding  
twenty-one  
years excepted.

IV. And whereas there is no provision made by the act, to which this is a supplement, for the proving deeds or conveyances where the grantors and the witnesses are deceased: For remedy whereof, *Be it enacted*, That from and after the publication of this act, where the grantors and witnesses of any deed or conveyance are deceased, or cannot be had, it shall and may be lawful to and for any of the Justices of the Supreme Court, or any Justice of the Court of Common Pleas of the county where the lands lie, to take the examination of any witness or witnesses, on oath or affirmation, to prove the hand-writing of such deceased witness or witnesses, or where such proof cannot be had, then to prove the hand-writing of the grantor or grantors, which shall be certified by the Justice before whom such proof shall be made, and such deed or conveyance, being so proved, shall be recorded as is usual in other cases directed by the said act.

Where grantors  
and witnesses  
are deceased,  
proof to be  
made of the  
hand-writing  
of such witnesses,  
&c.

V. And whereas the fees for recording deeds and other conveyances, as settled by the laws now in force, are not equal to the trust, labour and expense of the officers: *Be it therefore enacted*, [That from and after the publication of this act, the said Recorders, and the Master of the Rolls Office, respectively, shall have and receive, for recording, and for copying or exemplifying all laws, deeds,

Officers fees  
for recording,  
&c.



1774. conveyances and writings, entered in the said office, three farthings for every line containing not less than twelve words; and for every search one shilling; and for every acknowledging satisfaction in the margin of a mortgage, recorded as aforesaid, one shilling; and shall have and receive, for affixing the seal to every exemplification, one shilling and six-pence; and for the seal of office, and endorsement of certificate on each deed acknowledged, and his hand thereto, one shilling and six-pence.] (*y*)

Recorder to keep a fair book and enter every deed, &c. brought to his office to be recorded, &c.

VI. *And be it further enacted*, That every Recorder of Deeds in this province shall keep a fair book, in which he shall immediately make an entry of every deed or writing brought into his office to be recorded, mentioning therein the date, the parties and the place where the lands, tenements or hereditaments, granted or conveyed by the said deed or writing, are situate, dating the same entry on the day in which such deed or writing was brought into his office, and shall record all such deeds and writings in regular succession, according to their priority of time in being brought into the said office; and shall also immediately give a receipt to the person bringing such deed or writing to be recorded, bearing date on the same day with the entry, containing the abstract aforesaid; for which entry and receipt he shall take or receive no fee or reward whatever. And if any Recorder of Deeds within this province shall record any deed or writing before another first brought into his office to be recorded, or in any other manner than is herein directed, or shall neglect or refuse to make such an entry, or to give such a receipt as is herein before directed, or shall directly or indirectly take or receive any fee or reward for such entry and receipt, or either of them, he shall forfeit and pay, for every such offence, one hundred pounds, lawful money of this province; one half to the Governor, for the support of government, and the other half to him or them that shall sue for the same, to be recovered in any Court of Record within this province, by action of debt, bill or plaint, wherein no essoin, protection or wager of law, or more than one imparlance, shall be allowed.

Recorders to give security.

VII. *And be it further enacted*, That the Recorders of Deeds of the several counties of this province shall, on or before the first day of August next, become bound to the Governor of this province for the time being, in bonds with one or more sufficient securities, as follows, to wit:

[The sums increased, March 14th, 1777, post. chap. 737.]

[The Recorder for the county of Philadelphia in the sum of fifteen hundred pounds.

The Recorder for the county of Bucks in the sum of six hundred pounds.

The Recorder for the county of Chester in the sum of eight hundred pounds.

The Recorder for the county of Lancaster in the sum of eight hundred pounds.

The Recorder for the county of York in the sum of five hundred pounds.

The Recorder for the county of Cumberland in the sum of five hundred pounds.

(*y*) The existing fees for recording deeds are declared, chap. 1852. (*Note to former edition*)

The Recorder for the county of Berks in the sum of five hundred pounds. 1775.

The Recorder for the county of Northampton in the sum of five hundred pounds.

The Recorder for the county of Bedford in the sum of three hundred pounds.

The Recorder for the county of Northumberland in the sum of three hundred pounds.

The Recorder for the county of Westmoreland in the sum of three hundred pounds.]

Which said bonds shall severally be conditioned for the true and faithful execution of their several and respective offices, and for delivering up the records and other writings, belonging to the said respective offices, whole, safe and undefaced, to their successors in office; which said respective bonds shall be filed in the Secretary's office, and there be safely kept, in order to be made use of for making satisfaction to the parties that shall be damnified or aggrieved, in the same manner as the bonds given by the Sheriffs of the several counties are by law directed to be made use of, sued, prosecuted and applied.

Their bonds to be filed in the Secretary's office,

VIII. *And be it further enacted*, That so much of the act to which this is a supplement, as relates to the fees to be taken by the several Recorders, and the securities to be by them given, or is altered and supplied by this act, shall be, and the same is hereby declared to be repealed, and made null and void.

Part of a former act repealed,

Passed 18th March, 1775.—Recorded A. vol. VI. page 57.

## CHAPTER DCCVII.

An ACT to regulate the assize of bread, and for other purposes therein mentioned. (z)

VII. *And be it further enacted*, That if any person or persons shall adulterate or mix any improper or unwholesome ingredient in any kind of flour, of which bread shall be made for sale as aforesaid, every such person or persons, being thereof legally convicted before any Magistrate or Justice of the city, borough or county, where such bread shall be so made, sold or exposed to sale, who is hereby authorised and empowered to hear, try and determine the same, shall forfeit and pay the sum of five pounds for every such offence.

Penalty on persons adulterating their flour.

Passed 18th March, 1775.—Recorded A. vol. VI. page 59.

(z) Former acts passed on this subject, but now repealed and supplied, chap. 52, 332, 641, 675.

By chap. 844, sect. 9, 10, the Justices of the Peace (after the dissolution of the Corporation) were empowered to set the assize of bread in the city of Philadelphia, and also in any of the counties; but see the act reviving the Corporation of Philadelphia, chap. 1383, and the ordinances passed in Common Council.

So much of the act in the text, as relates to the assize and weight of bread was suspended for two years from the 4th of September, 1793, (chap. 1691;) and for two years more from the 6th of April, 1795, chap. 1813. By an act of the 1st of April, 1797, (chap. 1936,) the whole of the act in the text is repealed, except the seventh section; also the suspending acts. (Note to former edition.)



# ACTS

OF THE

## General Assembly of Pennsylvania.

Passed at a Session which commenced September 30th, 1775,  
and ended April 8th, 1776.

1776.

JOHN PENN. LIEUTENANT GOVERNOR.

### CHAPTER DCCXVII.

*An ACT to continue part of an act, made in the eleventh year of the reign of his present Majesty King George the third, entitled An Act for regulating and continuing the nightly watch, enlightening the streets, lanes and alleys of the city of Philadelphia, and for other purposes therein mentioned, and for making further provision for the better executing the said act. (a)*

**WHEREAS** an act made in the eleventh year of the reign of his present Majesty King George the third, entitled *An Act for regulating and continuing the nightly watch, enlightening the streets, lanes and alleys of the city of Philadelphia, and for other purposes therein mentioned*, will soon expire by its own limitation: And whereas the continuance of the said act, with some alterations and amendments, will tend to the advantage and security of the inhabitants of the said city: *Be it therefore enacted*, That the said act, and every clause, matter and thing, therein contained (except only where the same is hereby altered and varied) be, and is hereby declared to be, in full force, and made perpetual.

Act of the  
eleventh  
George III.  
made per-  
petual.

Former al-  
lowance of  
seven shil-  
lings and six  
pence to per-  
sons who  
keep pumps  
in their own  
yards discon-  
tinued.

**II.** And for the remedying such defects and inconveniences as have appeared in the execution of the said act, *Be it enacted*, That so much of the said act, as relates to an allowance of seven shillings and six-pence *per annum*, to such persons as keep pumps in their respective yards, be discontinued, and from and after the publication hereof do cease and determine. And if it shall happen that any such pump shall be used on any public occasion of fire, or other-

(a) For the original act, see ante. chap. 636. See, likewise, post. chap. 1090.  
(Note to former edition.)

wise, and any damage or injury shall be sustained by the owner thereof in his fences, buildings or yards, or such pump shall be damaged thereby, it shall and may be lawful for the said Wardens, and they are hereby required to repair the same, or compensate the owner or occupier thereof for such damage, out of the money raised by virtue of this act. And also that so much of the said act, as limits the rate of assessment made by virtue of the said act, so as that it shall not exceed the value of five pence in the pound for any one year, do in like manner cease and determine, and that it shall and may be lawful for the said Assessors, from and after the first day of October next, to encrease and enlarge the said rate, if necessary, so as the same shall not in any one year exceed the value of six pence in the pound.

1776.  
Assessors  
may enlarge  
the rate if  
necessary.

III. And whereas difficulties and inconveniences have arisen from the inaccuracy and irregularity of the returns made by the several Constables, in order to lay the assessment directed by the said act, and it is also represented that the time allowed for such service is too short: For remedying whereof, *Be it enacted*, That from and after the first day of October next, such returns or certificates of the taxables in the respective wards of the said city shall be made by one intelligent freeholder, to be chosen for that purpose out of each ward of the said city, at the same time, in the same manner, and by the same persons, as the Inspectors for holding annual elections now are; whose names, when so chosen, shall be returned in writing to the Wardens, under the hands of the constables and two or more of the electors, on or before the first day of October next following, by the Constable of the said ward; which said freeholders are hereby required and enjoined, under the like qualifications, to be administered by any of the aforesaid Wardens, as by the said act were directed to be administered to the Constables in such case, to do and perform the several duties, acts, matters and things, as by the said act the several Constables of the said city were heretofore required and directed to do, so far as the same relates to making true and fair certificates of the taxables in their respective wards; which said freeholders shall be entitled to receive from the treasurer of the said Wardens four shillings and six pence per day, for their care and trouble in executing and performing the said service.

An intelligent  
freeholder to be  
chosen out of  
each ward to  
make return  
of the taxa-  
bles, &c.

IV. *And be it further enacted*, That if any of the said freeholders, so chosen and appointed for the above purposes, shall refuse or neglect to take upon him or themselves, the said office, or to do and perform the services and duties hereby required of him or them, he or they, so refusing or neglecting, shall pay to the said Treasurer the sum of five pounds, to be recovered in the same manner, and applied to the same uses, as the other penalties and fines, in and by the said act imposed, limited and directed.

Penalty on  
freeholders  
refusing to  
serve.

V. *Be it also enacted*, That if at any time hereafter there shall be any neglect or omission in choosing the said freeholders, or any of them, or if, being so chosen, they, or any of them, shall neglect or refuse to take upon him or themselves the said office, or to do and perform the service to be by them done and performed by virtue of this act, that then, and in every such case, the said Wardens may and shall, until a succeeding election, appoint suitable and proper

In case of  
omission  
in choosing  
freeholders,  
Wardens  
may appoint  
suitable per-  
sons, &c.



1776. persons, as the occasion may require, to perform the said service ; which persons when appointed, shall have the same powers, be under the same restrictions, and subject to the same penalties, as if such person or persons had been regularly chosen and elected as aforesaid.

Certificates  
to be return-  
ed in ten  
days.

VI. *Be it also enacted*, That the time for making and returning the certificates of the taxables, by the said act directed, be extended to the term of ten days next after the date of the precept issued by the Wardens for that purpose.

Wardens,  
&c remov-  
ing out of  
the province,  
&c. how  
their places  
are to be sup-  
plied.

VII. And whereas there is no provision made by said act, in case any of the said Wardens, Assessors or Freeholders, should remove from this city, and thereby become incapable to perform the several duties of their respective offices. For remedy whereof, *Be it enacted*, That if any of the said Wardens, Assessors or Freeholders, shall happen to remove, during the time for which they are so chosen or appointed, out of this province, or to a greater distance from the city of Philadelphia than three miles, the Wardens and Assessors for the time being, or a majority of them, shall, in every such case, appoint one or more fit person or persons, in the place and stead of such Warden or Wardens, Assessor or Assessors, Freeholder or Freeholders, so removing as aforesaid, in the same manner as if such Warden, Assessor or Freeholder, was deceased, or had refused to execute the said office.

Passed 6th April, 1776.—Recorded A. vol. VI. page 90.

☞ *With this Session, the Legislative authority, under the Proprietary Government terminated; to which succeeded the Legislative authority established by the Constitution of Pennsylvania on the 28th September, 1776.*

# A C T S

OF THE

## General Assembly of Pennsylvania.

Passed at a Session which commenced November 28th, 1776,  
and ended March 21st, 1777.

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THOMAS WHARTON, PRESIDENT OF THE EXECUTIVE COUNCIL.  
JOHN JACOBS, SPEAKER OF THE GENERAL ASSEMBLY,

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1776.

### CHAPTER DCCXXVI.

*An ACT to revive and put in force such and so much of the late laws of the province of Pennsylvania, as is judged necessary to be in force in this commonwealth, and to revive and establish the Courts of Justice, and for other purposes therein mentioned.*

WHEREAS, by the unconstitutional power claimed by the British King and Parliament over the American colonies, and the cruel and oppressive measures which the said King and Parliament have pursued to establish that power, it became necessary for the colonies to declare themselves free and independent states, which was accordingly done, pursuant to a resolve of the Continental Congress : Whereupon all authority being in any person under the said king consequently ceased, and the laws enacted by his representatives here became of no force or effect, although the same were for the most part suited to the circumstances of the people : And whereas it is absolutely necessary, for the well governing every state, that laws properly adapted to the circumstances of the inhabitants be at all times in force.

II. *Be it therefore enacted, and it is hereby enacted,* That each and every one of the laws or acts of General Assembly, that were in force and binding on the inhabitants of the said province on the fourteenth day of May last, shall be in force and binding on the inhabitants of this state from and after the tenth day of February next, as fully and effectually, to all intents and purposes, as if the said laws, and each of them, had been made or enacted by this General Assembly ; and all and every person and persons whomsoever are hereby enjoined and required to yield obedience to the said laws, as

All laws in force on the 14th May, 1776, shall be binding from and after the 10th February 1777.



1776. the case may require until the said laws or acts of General Assembly respectively shall be repealed or altered, or until they expire by their own limitation; and the common law and such of the statute-laws of England, as have heretofore been in force in the said province, except as is hereafter excepted.

Also the  
common and  
statute laws.

Exceptions.

III. *Provided always, and be it further enacted*, That so much of every law or act of General Assembly of the province aforesaid, as orders the taking or subscribing any oath, affirmation or declaration of allegiance or fidelity to the king of Great-Britain, or his successors, or oath of office; and so much of every law or act of General Assembly aforesaid, as acknowledges any authority in the heirs or devisees of William Penn, Esq. deceased, the former Governor of the said province, or any other person whomsoever as Governor; and so much of every law or act of General Assembly, as ascertains the number of Members of Assembly in any county, the time of election, and the qualifications of electors; and so much of every law or act of Assembly aforesaid, as declares, orders, directs or commands any matter or thing repugnant to, against, or inconsistent with the constitution of this commonwealth, is hereby declared not to be revived, but shall be null and void, and of no force or effect; and so much of the statute laws of England aforesaid relating to felonies, as takes notice of or relates to treason or misprision of treason, or directs the style of the process in any case whatsoever, shall be, and is hereby declared, of no force or effect, any thing herein contained to the contrary notwithstanding.

Obsolete;  
see the general  
summary,  
ante. chap.  
255. pa. 131.]

All courts  
shall be held  
at the same  
times and  
places as for-  
merly.

IV. *And be it further enacted*, That Courts of General Quarter Sessions and Gaol Delivery, and Courts of Petty Sessions, Courts of Common Pleas, Orphans' Courts, and Supreme Courts, Courts of Oyer and Terminer and General Gaol Delivery, shall be held and kept in each respective county in this state, at the times and places directed and appointed by the said laws or acts of General Assembly, and Circuit and *Nisi Prius* Courts, as directed in and by an act of General Assembly of the said province, passed the twentieth day of May, one thousand seven hundred and sixty-seven, entitled *An act to amend the act for establishing Courts of Judicature within this province*, by the Justices and Judges that shall be hereafter elected and appointed; the same to commence in each county on the same days of the same months respectively appointed by the said laws for holding such courts, that shall be next after the Judges or Justices of such courts are qualified to hold the same, and shall have, use and exercise all the powers, authority and jurisdiction, that by the aforesaid laws Justices and Judges of such courts respectively heretofore have had, used and exercised, and the powers of Chancery given to the Justices by the constitution of this state, agreeable nevertheless with this act, and such other act or acts of General Assembly as shall be hereafter made: and every officer of all and every the courts in this state, that is or shall be appointed, shall have, use and exercise the same or like powers, that such officer or officers of the same title, character and distinction, might, could or ought to have had, used and exercised; under the charter and laws of Pennsylvania, until displaced. And all Constables, Overseers of the poor, Supervisors of the highways, and the War-

And all officers of courts shall exercise the same powers as formerly.

All Constables, Overseers, Super-



and Street Commissioners of the city of Philadelphia, that were last appointed or elected in the said province, are hereby authorized and strictly enjoined and required to exercise their several and respective powers, and execute, do, and perform all the business and duties of their several and respective offices, until others are appointed in their stead and places.

1777.

visors, Wardens, and Street Commissioners, last appointed, shall continue.

[V. *And be it further enacted*, That all persons who have been appointed to any public office or offices by the said king of Great-Britain, or the late Governors of Pennsylvania, or by acts of General Assembly aforesaid, are hereby declared to be no longer officers in the several and respective offices to which they were so appointed, the trustees of the Loan-Office only excepted.]

All officers of the late government are declared to be removed, except the Trustees of the Loan-Office. [Obsolete,]

VI. *And be it further enacted*, That the President and Council shall appoint one of the Justices in each respective county to preside in the respective courts, and in his absence the Justices who shall attend the court shall choose one of themselves president for the time being.

President and Council shall appoint a president of each court. [Obsolete see ante. pa. 131 &c.]

VII. *And be it further enacted*, That every action that was in any court in the province of Pennsylvania, at the last term that the said court was held, except discontinued or satisfied, shall be, and is hereby declared to be, in the same state, and on the same rule, and may be prosecuted in the same manner in the courts in each respective county, to be hereafter held and kept, as if the authority of such court had never ceased; and if any recognizance has been taken, and not returned, it is hereby declared good and valid in law, and shall be returned and prosecuted as the laws direct, saving the style; and where any person had obtained a judgment before any Justice of the Peace, for any debt or sum of money, and such judgment not discharged, the person in whose favour the judgment is, may (on producing a transcript of such judgment to any Justice of the Peace in the county where the defendant dwells or can be found) demand and obtain an execution for the money mentioned in such judgment, which shall be of the same force and effect, as if the judgment was obtained before the Justice that granted the execution.

All actions shall be continued.

And former recognizances are declared valid.

VIII. *And be it further enacted*, That in all cases whatsoever, where any person, being an officer of the province of Pennsylvania, and by direction of the laws of the said province, gave bond to the governor, for the use of the province, and the condition of such bond not fully complied with, all such bonds are hereby declared to be in force for the purposes they were designed, and good and available in law, and may be sued and prosecuted in the name of the commonwealth, in any Court of Record within this state, as fully and effectually as such bonds might or could have been heretofore sued and prosecuted under the late government of Pennsylvania, and the money thereby recovered shall be applied as such acts direct, except where any such forfeiture, or part thereof, was granted to the Governor, and in that case such forfeiture, so granted, shall be paid into the State-Treasury, for the public use; and all fines and forfeitures granted to the governor of Pennsylvania, by the laws by this act put in force, shall, and are hereby declared to be for the use of the State, and shall be paid into the State-Treasury.

Bonds to the government are declared valid.

And all fines &c. shall be paid into the state treasury.



1777. IX. *And be it further enacted*, That the style of the process in all courts, and in all prosecutions for offences against the state, shall be as the constitution directs. (b)

Passed 28th January, 1777.—Recorded in Law Book, vol. I. page 69.

(b) The act for the revival of the laws was intended merely to declare that those laws, which were originally enacted under the authority of George the third, ceased any longer to derive their virtue and validity from that source. There is, however, great inaccuracy in penning the act; for though it would seem, by the former part of the second section, to be the sense of the legislature, that from the 14th of May, 1776, to the tenth of February, 1777, the operation of all the acts of Assembly should be suspended, yet in the close of the same section, obedience to those acts, to the common law, and to so much of the statute laws of England as have *heretofore* been in force, are expressly enjoined. 1 Dallas, 58.

No act of Parliament made in England, *previously* to the settlement of the province of Pennsylvania, was extended here, unless by act of assembly, adjudications of courts, or established usage. 1 Dallas, 67, 74, 75. The *common law* of England has always been in force in Pennsylvania; but all statutes made *since* the settlement of the province have no force here, unless the colonies are particularly named. 1 Dallas, 67.

The law of nations forms a part of the municipal law of Pennsylvania. 1 Dallas, 114. (*Note to former edition.*)

With respect to the British Statutes, which have been considered as extending to *Pennsylvania*, the report of the Judges of the Supreme Court, to be found in the journals of 1808-9, enables us to determine precisely. Such of the statutes as, in the opinion of the Judges, ought not to be incorporated into the statute law of the commonwealth, are marked with an asterisk, in the following abstract.

9 Hen. 3, c. 7, (only with respect to the widows quarantine.)

\* c. 34.

20 Hen. 3, c. 1—2—3—9.

21 Hen. 3. (The day of the leap year, and the day before, shall be holden for one day.)

52 Hen. 3, c. 4—8—13—15—17—29.

3 Edw. 1, c. 9, (that part which provides, "that all generally, shall be ready at the commandment and summons of sheriffs, and

at the cry of the country, to pursue and arrest felons, where any need it.")

3 Edw. 1, c. 40—\*42—\*43—\*44—47, (except those parts which relate to prelates, men of religion, and writs of attain.)

4 Edw. 1 stat. 2, (except those parts which relate to the Coroner's duty in the following points; *viz.*—making inquiry as to the property of any person; treasure that is found; appeal of rape, or of wounds, or any other appeals; deodands, and wrecks of the sea:—and also, except that part which provides, that land shall remain in the King's hands, until the Lords of the fee have made fine for it.)

6 Edw. 1, c. 1—2—3—5, (except that part which relates to waste, in the time of wardship, which is not applicable to this country.)

c. 6—\*10—13—

13 Edw. 1, stat. 1, c. 1, (except such part as has been altered by an act of Assembly, passed 27th January, 1749—50, entitled, "An Act for barring estates tail," and another act passed January 16th, 1799, entitled "an act to facilitate the barring of entails.")

c. 3—4, (except that part which relates to proceedings in a writ of right.)

c. 6—7—11—\*12—14—15—\*17—20—22—23—24, (except those parts which relate to ecclesiastical persons.)—25, (except that part which gives the remedy by assize in cases of keeping of parks, woods, forests, chases, warrens, gates, and other bailiwicks and officers in fee.—Also,

- by assize, in case any person holding land, for term of years, aliens the same in fee; and by such alienation the freehold is transferred to the feoffee. Also, that part which authorises the sheriff to take an ox for his fee.)—26—\*27—30, (the following parts, only, are in force—"Sect 2: and when such inquests be taken, they shall be returned into the bench; and there shall judgment be given, and there they shall be enrolled. The Justices of Nisi Prius shall have clerks, to enrol all pleas pleaded before them. The said Justices shall not compel the Jurors to say precisely, whether it be a disseisin or not; so that they shew the truth of the deed and require aid of the said Justices. But if they, of their own head, will say that it is a disseisin, their verdict shall be admitted at their own peril.)—31—34, (that part only, which enacts \*that if a wife willingly leave her husband, and go away, and continue with her avowter, she shall be barred for ever of action to demand her dower, that she ought to have of her husband's lands, if she be convicted thereupon; except that her husband willingly reconcile her, and suffer her to dwell with him; in which case she shall be restored to her action.)—39 (those parts only which define "what shall be accounted issues" direct the punishment of the Sheriff for false returns; give authority to the Sheriff to do certain things in case of resistance of the execution of process; and direct the punishment of those who resist the execution of process.)—40—45.—
- 18 Edw. 1, stat. 2, stat. 3, stat. 4.  
 20 Edw. 1, stat. 1, stat. 2, stat. 3.  
 27 Edw. 1, stat. 1, c. 1.  
 28 Edw. 1, \*stat. 2—stat. 3, c. 16.  
 33 Edw. 1, stat. 2. (That part only is in force, which relates to "Conspirators;" and from that part is to be excepted, what relates to "Stewards and Bailiffs of great Lords.")  
 stat. 3. (That part only of this statute is in force which relates to conspirators.)  
 stat. 4—stat. 6.  
 34 Edw. 1, stat. 1. (except those parts which relate to writs of "*Juris utrum*" and "*indicavit*.")  
 12 Edw. 2, stat. 1, c. 1—c. 4. (Those parts only which are distinguished by the numbers 1, 2, and 6.)  
 c. 5. (That part only, which obliges Sheriffs and other officers, to sign their names to the return of writs.)  
 \* Stat. 2—(The stat. of Essoins.)  
 15 Edw. 2, (except that part which relates to the "admission of attorneys.")  
 2 Edw. 3, c. 16—17.  
 4 Edw. 3, c. 2. (Those parts only, which are distinguished by the numbers 6 & 7.)  
 c. 7. (Executors shall have an action of trespass for a wrong done to their testator.)  
 5 Edw. 3, c. 10.  
 14 Edw. 3, stat. 1, c. 6.  
 c. 16. (That part of it, only, which enacts, that "the Justices of *Nisi Prius* shall have power to give judgment on verdicts of assize; and upon nonsuits and defaults; and return the same to the Court in Bank.")  
 c. 18—  
 25 Edw. 3, stat. 2. (That part, only, which is distinguished by No. 5.)  
 Stat. 5, c. 3—5—16.  
 28 Edw. 3, \* c. 13. (That part only, which gives an Inquest *de medietate lingue*.)  
 31 Edw. 3, stat. 1, c. 11. (except that part which relates to expending money for the soul of the deceased.)  
 34 Edw. 3, c. 1. (Those parts, only, which are distinguished



1777.

- by the numbers, 2, 3, 4, 5, 6, 10.)
- c. 8—16—
- 38 Edw. 3, stat. 1, c. 12.
- 50 Edw. 3, c. 6.
- 1 Rich. 2, c. 9. (except such parts as are altered by the statutes of 4 Hen. 4, c. 7—11 Hen. 6, c. 3—4 Hen. 7, c. 24 and 27. Hen. 8, c. 10.)
- c. 12. (except such parts as relate to confessions of debts to the king.)
- 6 Rich. 2, stat. 1, c. 3. (So much thereof as gives the plaintiff an election to have a writ of nuisance, in nature of an assize.)
- 8 Rich. 2, c. 4.
- 9 Rich. 2, c. 5. (So much only as gives a writ of error to him in reversion.)
- 13 Rich. 2, stat. 1, c. 17.
- 15 Rich. 2, c. 2. (So much only as relates to forcible entry and detainer, or either of them.)
- 2 Hen. 4, c. 7.
- 4 Hen. 4, c. 7.
- 5 Hen. 4, c. 14. (That part, only, which directs, that all writs of covenant, and all other writs whereupon fines shall be levied, with the writs of *dedimus potestatem*, if any, with all knowledge and notes of the same, shall be inrolled in a roll, to be of record for ever.)
- 1 Hen. 5, c. 5. (So much thereof, as requires an addition of the defendant's estate, or degree, or mystery, and of the county in which the defendant is, or in which he is conversant.)
- 9 Hen. 5, c. 4.
- 4 Hen. 6, c. 3.
- 8 Hen. 6, c. 9—12. (Sect. 1 & 2.)—15—\*29—
- 11 Hen. 6, c. 2—3—5.
- 1 Rich. 3, c. 7. (except such parts as are altered by stat. 31 Eliz. c. 2.)
- 3 Hen. 7, c. 1. (Those parts only, which are distinguished by the numbers from 6 to 19, both inclusive, and by the number 26.)
- c. 3. (No. 5.)—c. 4—10.
- 4 Hen. 7, c. 20—24.
- 11 Hen. 7, c. 12—20.
- 19 Hen. 7, c. 20.
- 5 Hen. 8, c. 6. (So much only as discharges surgeons from service on juries.)
- 7 Hen. 8, c. 4. (Except those parts that relate to writs of *quare impedit*, and advowsons.)
- 21 Hen. 8, c. 3—5. (That part only which relates to whom administration is to be granted.)
- c. 7—15.
- 23 Hen. 8, c. 15.
- 24 Hen. 8, c. 8.
- 27 Hen. 8, c. 10, (sect. 1, 2, 3, 4, 5, 6, 7, 10, only.)
- 31 Hen. 8, c. 1.
- 32 Hen. 8, c. 5—28, (except the 4th, 5th, and 8th sections)—
- 30 (except the 2d and 3d sections)—
- 32—33—34, (except such parts as relate to the King and his Grantees.)—
- 36 (except the 3d and 4th sections.)—
- 37 (except the 2d section.)—
- 37 Hen. 8, c. 8, (except the 2d section.)
- 2 & 3 Edw. 6, c. 24.
- 1 Mary, Session 2, c. 7.
- 1 & 2 Phil. & Mary, c. 12—13, (Sect 2, 3, 4, & 5, only.)
- 2 & 3 Phil. & Mary, c. 10.
- 5 Eliz. c. 9. (An act for the punishment of such as shall procure or commit any wilful perjury—except the 10th, 11th, 12th, & 13th sections, which are inapplicable to this Commonwealth, and except the punishment by imprisonment and paying of money, which is altered by our act of Assembly for reforming the penal laws.)
- 8 Eliz. c. 2, (sect. 1, 2, 4 & 5, only.)
- 13 Eliz. c. 5.—
- 14 Eliz. c. 8.—
- 18 Eliz. c. 14, (except the 3d section.)
- 23 Eliz. c. 3, (except sections 6, 8, 9 & 10.)
- 27 Eliz. c. 4, (except sections 7, 8, 9, 10, 11 & 12.)
- c. 5.—
- 31 Eliz. c. 2—11.
- 43 Eliz. c. 8.
- 3 James 1, c. 8.
- 4 James 1, c. 3.
- 21 James 1, c. 13—15—24.
- 12 Charles 2, c. 24. (Sections 8 & 9 only.)
- 13 Charles 2, stat. 2, c. 2. (An act for

the prevention of vexations and oppressions by arrests, and of delays in suits of law; except certain parts which have a local object, and are therefore inapplicable to this commonwealth; and certain other parts, which are altered by our acts of Assembly or the practice of our courts.)

5 Geo. 1, c. 13.

7 Geo. 2, c. 20. (Sections 1, 3.)

11 Geo. 2, c. 19. (Sections 14 and 15 only.)

There are several statutes, called statutes of *mortmain*; one of which ('The statute *de religiosis*') was passed in the 7th year of Edw. 1, stat. 2d; another, in the 13th year of Edw. 1, c. 32, another in the 15th year of Rich. 2, c. 5; and another in the 23d year of Hen. 8, c. 10. These statutes are in part inapplicable to this country, and in part applicable, and in force. They are so far in force, that all conveyances, either by deed or will, of lands, tenements, or hereditaments, made to a body corporate, or for the use of a body corporate, are void, unless sanctioned by charter, or act of assembly. So also are all such conveyances void, made either to an individual, or to any number of persons associated, but not incorporated, if the said conveyances are for uses or purposes of a *superstitious* nature, and not calculated to promote objects of charity or utility.

16 and 17 Charles 2, c. 8. (Subject to the same exceptions.)

17 Charles 2, c. 8.

19 Charles 2, c. 6.

22 and 23 Charles 2, c. 9. (c. 136.)

30 Charles 2, c. 7.

4 and 5 William and Mary, c. 21.

8 and 9 William 3, c. 11.

9 and 10 William 3, c. 15,

10 and 11 William 3, c. 16.

11 and 12 William 3, c. 6.

3 and 4 Ann, c. 9. (Sect. 1, 2, 4 and 8 only.)

4 Ann, c. 16. (The first 13, and 20th and 27th sections only.)

## CHAPTER DCCXXIX.

*An ACT declaring what shall be treason, and what other crimes and practices against the state, shall be misprision of treason.*

**WHEREAS** it is absolutely necessary, for the safety of every state, to prevent, as much as possible, all treasonable and dangerous practices that may be carried on by the internal enemies thereof, and to provide punishments in some degree adequate thereto, in order to deter all persons from the perpetration of such horrid and dangerous crimes: Therefore,

**II.** *Be it enacted, and it is hereby enacted,* That all and every person and persons (except prisoners of war) now inhabiting, residing, or sojourning within the limits of the state of Pennsylvania, or that shall voluntarily come into the same hereafter to inhabit reside, or sojourn, do owe, and shall pay allegiance to the state of Pennsylvania.

All persons now residing in this state owe allegiance to it.

**III.** *And be it further enacted,* That if any person or persons, belonging to or residing within this state, and under the protection of its laws, shall take a commission or commissions from the King of Great-Britain, or any under his authority, or other the enemies of this state, or the United States of America; or who shall levy war against the state, or government thereof; or knowingly and willingly shall aid or assist any enemies at open war against this state, or the United States of America, by joining their armies, or by enlisting, or procuring or persuading others to enlist for that purpose, or by furnishing such enemies with arms or ammunition, provision, or any other article or articles, for their aid or comfort; or by carrying on a traitorous correspondence with them; or shall form,

Enumeration of what shall constitute treason.



1777. or be anywise concerned in forming, any combination, plot or conspiracy, for betraying this state, or the United States of America, into the hands or power of any foreign enemy; or shall give or send any intelligence to the enemies of this state for that purpose; every person so offending, and being thereof legally convicted, by the evidence of two sufficient witnesses, in any Court of Oyer and Terminer, shall be adjudged guilty of high treason, and shall suffer death; and his or her estate shall be, and is hereby declared to be, forfeited to the commonwealth, except such parts thereof as the Judges of the Court, wherein such conviction may be, shall order and appropriate to the support of such traitor's children, or wife and children (if any) as to them may appear sufficient, until the same shall be otherwise regulated by act of General Assembly.

Punishment.

Exception as to wife and children.

[See post. chap. 773. sect. 20.]

What shall be misprision of treason.

Punishment.

Misprision of treason where cognizable.

IV. *And be it further enacted*, That if any person or persons, within this state, shall attempt to convey intelligence to the enemies of this state, or the United States of America, or by publicly and deliberately speaking or writing against our public defence; or shall maliciously and advisedly endeavour to excite the people to resist the government of this commonwealth, or persuade them to return to a dependence upon the crown of Great-Britain; or shall maliciously and advisedly terrify or discourage the people from enlisting into the service of the commonwealth; or shall stir up, excite or raise tumults, disorders or insurrections in the state, or dispose them to favour the enemy; or oppose and endeavour to prevent the measures carrying on in support of the freedom and independence of the said United States; every such person, being thereof legally convicted, by the evidence of two or more credible witnesses, in any Court of General Quarter Sessions, shall be adjudged guilty of misprision of treason, and shall suffer imprisonment during the present war, and forfeit to the commonwealth one half of his or her lands and tenements, goods and chattels.

V. *And be it further enacted*, That all offences, by this act declared misprision of treason, shall be cognizable before any Justice of the Peace of the city or county where the offence was committed, or where the offender can be found; and every Justice of the Peace within this state, on complaint to him made, on oath or affirmation of one or more credible person or persons, shall cause such offender to come before him, and enter into a recognizance, with one or more sufficient surety or sureties, to be and appear at the next Court of General Quarter Sessions for the said city or county, and abide the judgment of the court; and in the mean time to be of the peace and good behaviour toward all people in the state, and for want of such surety, the said Justice shall commit such offender to the common gaol of the said city or county: And all persons charged, on oath or affirmation, with any crime or crimes, by this act declared to be treason against the state, shall be dealt with and proceeded against, as in other capital crimes is by law directed. (c)

Passed 11th February, 1777.—Recorded in Law Book, vol. I. page 79.

(c) By chap. 878, post. the executive was empowered to pardon persons, under sentence of death, for treason or felony, on condition of leaving the United States, never to return. The same act provided, that no attainder of treason, subsequent to the war between the United States and Great Britain,

should extend to the disinheriting of any heir, nor to the prejudice of any person or persons, other than the offender, which provision has since been confirmed by law, chap. 1505, section 2, and is incorporated into the existing constitution, art. 3, section 19.

The act further authorized the Attorney-General, with the leave of the Court, to prosecute persons charged with offences that amount to treason, or misprision of treason, for misdemeanors, and to give in evidence, on the trial, any act of treason, or misprision of treason, by one witness, or other legal testimony.

By an act of the 3d of December, 1782, (post. chap. 989, it was enacted, that any persons, who shall erect or form, or shall endeavour to erect or form, any new and independent government within the boundaries of this commonwealth; or who shall set up any notice, calling on the people to meet with that design; or who shall assemble for that purpose, in consequence of such notice; or who shall, at any such meeting, maliciously and advisedly recommend or desire the people to erect or form any new independent government in any part of this state; or shall read to them any new form of constitution, with a design to induce them to adopt the same, as a new and independent constitution; shall be adjudged guilty of high treason; on conviction by the evidence of two witnesses shall suffer death, and forfeiture of estate. The act likewise authorized the offenders to be tried *in any county of the state*; but it was soon afterwards *so far* repealed, chap. 1157. By the constitution of the United States it is now provided, that "New states may be admitted by Congress into the Union; but no new state shall be formed or erected within the jurisdiction of any other state, nor any state be formed by the junction of two or more states, or parts of states, without the consent of the legislatures of the states concerned, as well as of the Congress," art. 4, section 3. By the 18th section of the 9th art. of the constitution, it is declared that "No person shall be attainted of treason or felony by the legislature; and by the 19th section of the same art. it is declared, that "No attainder shall work corruption of blood, nor, except during the life of the offender, forfeiture of estate to the commonwealth." A similar provision is contained in the federal constitution, art. 3, where, likewise, treason against the United States, is defined to consist only "In levying war against them, or in adhering to their enemies, giving them aid and comfort;" and it is de-

clared, that "No person shall be convicted of treason, unless on the testimony of two witnesses to the same overt act, or on confession in open court."

For the process of *outlawry*, on a charge of high treason, &c. see chap. 1572.

On the 22d April, 1794, chap. 1766, the punishment of death was abolished in all cases, except the case of murder of the first degree; and in the case of high treason, imprisonment at hard labour, for a period not less than six years, nor more than twelve years, was substituted. *Ibid.* section 4.

A person accused of high treason shall have a copy of the indictment a reasonable time, not less than one day, before the trial; and also, within the same time, a copy of the pannel of the jurors. 1 Dallas, 33. *Respublica v. Molder.*

Adherence to *American* troops, though in consequence of mistaking them for the enemy, cannot be treason. *Ibid.* *Respublica v. Malin.*

Words, indicating the defendant's intention to join the enemy, are proper testimony to explain the motives upon which the intent was afterwards carried into effect. *Ibid.*

Evidence may be given of an overt act committed in another county, after an overt act is proved to have been committed in the county where the indictment is laid. *Ibid.*

Evidence that the defendant had a power to let people in and out of the city, when in possession of the enemy, ought to be received; but not as conclusive proof of his holding a commission under them. *Ibid.* page 35. *Respublica v. Carlisle.*

But evidence of his seizing salt, or disarming the Americans, does not apply to that species of treason, though it may prove his having joined the armies of the enemy. *Ibid.*

It is enough to lay in the indictment, that the defendant sent intelligence, without setting forth the particular letter, or its contents. *Ibid.*

The charge of levying war is not, of itself, sufficient; but assembling, joining and arraying, with the forces of the enemy, is sufficient overt act of levying war. *Ibid.*

There must be an actual enlistment of the person persuaded, in order to make it treason in the persuader. *Ibid.* page 39. *Respublica v. Roberts.*

If an overt act has been proved, where the indictment is laid, the defendant's confession may be given in evidence, to corroborate that proof. *Ibid.*

Treason is a crime known at the common law. *Ibid.* page 53. *Respublica v. Chapman.*



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Treason, which is nothing more than a criminal attempt to destroy the government, may be committed, before the different qualities of the crime are defined and its punishment declared by positive law. *Ibid.* page 57.

After the peace with *Great Britain*, the court would not sustain a suggestion, filed by the Attorney General, against one, who was attainted in pursuance of a proclamation issued during the war, as a proceeding of that kind would contravene an express article in the treaty. *Ibid.* page 233. *Respublica v Gordon.* (Note to former edition.)

*Respublica v. M'Carty.*

The defendant was indicted for high treason, in levying war, &c. by joining the armies of the king of *Great Britain*.

On the trial, the Attorney General offered to give the confession of the party in evidence, made at the time of his arraignment; but Ingersol objected, that a confession could only be admitted to be given in evidence by way of corroboration, and that therefore an overt act should be first proved. *Fost.* 10, 240.

*Bradford*, Attorney General, contended, that the confession proved by two witnesses, was of itself sufficient; but, that independent of that position, it was not necessary to prove the overt act, before the admission of the confession.

*By the Court.* No case of this kind has hitherto occurred in this court. In the case of the *Commonwealth v. Roberts*, the defendant's confession was offered merely to shew, *quo animo* he committed the treasonable act; and the Court were there of opinion, that it ought to be admitted as corroborative proof. We find, indeed, that in *Berwick's* case, *Fost.* 10, two Judges thought that a confession *after the fact*, proved by two witnesses, was sufficient to convict, within the 7th W. 3, but Justice Foster doubted the propriety of that opinion; as the statute seemed to require two witnesses to the overt act, or a confession *in open Court*.

The stat. 7, W. 3, on which that diversity of sentiment arose, does not, however, extend to *Pennsylvania*; but materially varies from our law on the subject. For instance: The Act of Parliament requires two witnesses to find the indictment, as well as to prove the overt act upon the trial: but the act of Assembly prescribes nothing about the evidence to find the indictment; which may, therefore, proceed either from one witness, or from any other kind of proof, that will serve to con-

vince the grand jury; and, although it declares that there shall be two witnesses to convict the defendant on his trial, it does not specify that they shall be witnesses to an overt act, or any other particular matter. Again: The stat. W. 3, provides for the case of a confession, "*willingly, without violence, in open Court*;" whereas the act of Assembly uses no such words.

Certain it is, that considered abstractedly at common law, the confession of the party would be sufficient proof to convict him. But upon the *whole*, we decline giving an opinion at this time, whether, taking into view the act of Assembly, the confession proved by two witnesses, can have such conclusive force. We do not hesitate, however, to receive it in corroboration of any other evidence that may be adduced in support of the proposition.

The evidence, and arguments of counsel being concluded, the Chief Justice delivered the following charge to the jury:

The crime imputed to the defendant by the indictment, is that of levying war, by joining the armies of the king of *Great-Britain*. Inlisting, or procuring any person to be enlisted, in the service of the enemy, is clearly an act of treason. By the defendant's own confession it appears that he actually enlisted in a corps belonging to the enemy; but it also appears that he had previously been taken prisoner by them, and confined at *Wilmington*. He remained, however, with the *British* troops for ten or eleven months, during which he might easily have accomplished his escape; and it must be remembered, that, in the eye of the law, nothing will excuse the act of joining an enemy, but the fear of immediate death; not the fear of any inferior personal injury, nor the apprehension of any outrage upon property. But had the defendant enlisted merely from the fear of famishing, and with a sincere intention to make his escape, the fear could not surely always continue, nor could his intention remain unexecuted for so long a period.

In the present instance, the confession of the defendant was not taken in writing and subscribed: but the stat. 1 and 2 *Phil. & Mary*, c. 10, is in force in *Pennsylvania*; and, as in common cases it is sufficient for the purposes of evidence, if a man subscribes his examination before a magistrate, so, in the case of treason, a confession reduced to writing, and subscribed before a Justice and another witness, would be sufficient grounds for a conviction under our act of Assembly, or even under the stat. of



W. 3. At the time of William's landing in England, James still maintained a strong party; of whom some were to be found in the *House of Lords*, and some in the *House of Commons*. The statute was probably, therefore, framed, so as to be most favourable to those who espoused the cause of the invading monarch; and hence we may derive all the provisions which, on a charge of high treason, make two witnesses necessary to the same overt act, or to two different overt acts of the same treason, or the confession of the defendant in open Court, 5 Bac. Abr. 145, (folio, letter (I) —548—(octavo, letters D d—5th edit. by *Gwillim*, vol 6.) It appears, however, as I have before intimated, that it has been decided that a confession, though not made in open Court, if made in the presence of two witnesses, may be read in evidence against the defendant, contrary to the opinion of C. J. *Trevor*, and the doubts of Justice *Tracy*, Bac. Abr. ib. Fost. 10, 240. The case in Bac. must have been the case of an examination in writing, as it is said it might be read in evidence; but *Berwick's* case was a confession at the time of the fact; so that the former had no conclusive influence on the latter authority.

It must, at the same time, be allowed that most of the authorities on this point, seem to lean against the admission of the party's confession in the presence of two witnesses, as sufficient for conviction, unless it is made at the time of committing the criminal act, or before a magistrate duly authorised. But the case now before us, arises on a confession in open Court; and though the whole confession must be considered together, yet the jury may, unquestionably, on this, as on every other point of evidence, believe one part, and disregard another. The prisoner was acquitted, 2 Dallas, 86.

In the case of *U. S. v. Vigol, Patterson*, J. declared in his charge to the jury, (corresponding with part of the foregoing case) "That the fear which the law recognizes as an excuse for the perpetration of an offence, must proceed from an immediate and actual danger, threatening the very life of the party. The apprehension of any loss of property, by waste, or fire; or even an apprehension of a slight, or remote injury to the person, furnish no excuse. If, indeed, such circumstances could avail, it would be in the power of every crafty leader of tumults and rebellion, to indemnify his followers, by uttering previous menaces; an avenue would be forever open for the escape of unsuccessful guilt; and the whole fabric of socie-

ty, must, inevitably, be laid prostrate. 2 Dallas, 347.

In the *Commonwealth v. Weidle*, the defendant was indicted on the 4th section of the act in the text, for misprision of treason in speaking the following words: "That he had lived six years in London, and nine years in Ireland; and never lived happier in his life, than he had done under the English government; and that the king of England is our king, and will be your's." The words proved were somewhat different in expression, but the same in substance. Some attempt was made to shew that the defendant was intoxicated at the time of speaking the offensive words.

It was admitted that the section was obscurely and inaccurately worded; and the C: Justice said, that a law constituting a crime, must be strictly and literally interpreted and pursued. But the words spoken tended to excite resistance to the government of this commonwealth, to persuade the audience to return to a dependance upon the crown of Great-Britain, and to favour the enemy; which are distinct and substantive charges of misprision of treason. The words must be spoken with a malicious intention, in order to render them criminal; a mere loose and idle conversation, without any wickedness of heart, may be indiscreet and reprehensible, but ought not to be construed into misprision of treason. On the other hand, drunkenness is no justification or excuse, for committing the offence; to allow it as such, would open a door for the practice of the greatest enormities. Verdict, *Guilty*. 2 Dallas, 88.

The sixth article of the constitution of the *United States*, among other things declares, That the constitution, and laws of the *United States* made in pursuance thereof, shall be the SUPREME LAW OF THE LAND; and the Judges in every state shall be bound thereby, any thing in the constitution or laws of any state to the contrary notwithstanding.

It will be useful for the people of *Pennsylvania*, therefore, to have the means of information on a subject so interesting, within their power at all times—The act of the *United States*, and abstracts of the decisions under it, are here referred to for that purpose.

Treason, is defined in the constitution itself; and the proof necessary to conviction is prescribed. (See the first part of the note to the act in the text.)

An act for the punishment of certain crimes against the *United States*, was passed April 30th, 1790, vol. 1, pa. 100. (Folwell's edition.)

Sect. 29. In cases of treason, the



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prisoner shall have a copy of the indictment, list of the witnesses and jury, &c. at least three entire days before he shall be tried for the same, and process to compel his witnesses to appear.

Sect. 30. If the prisoner stand mute, or challenge peremptorily above the number of thirty-five of the jury, the Court shall notwithstanding proceed to the trial, as if he had pleaded not guilty; and render judgment thereon accordingly.

Sect. 31. The benefit of clergy is taken away in treason.

Sect. 32. No person shall be prosecuted, tried or punished for treason, unless the indictment for the same shall be found by a grand jury within three years next after the treason shall be done or committed.

The first section defines treason as in the Constitution, and the proof necessary to a conviction; and declares the punishment to be death.

The second section defines misprision of treason to be, "if any person having knowledge of the commission of treason, shall conceal, and not as soon as may be, disclose and make known the same, to the President of the United States, or some one of the Judges thereof, or to the President or Governor of a particular state, or some one of the Judges or Justices thereof;" and directs the punishment to be imprisonment not exceeding seven years, and a fine not exceeding one thousand dollars.

With respect to the number of jurors that may be summoned and returned; the form of the panel; what is a sufficient addition, and what a sufficient definition of the places of abode of jurors and witnesses, see 2 Dallas, 335 to 342.

A copy of the caption of the indictment, as well as of the indictment itself, must be delivered to the prisoners. *ib. U. S. v. The Insurgents of Pennsylvania.*

A reasonable time shall be allowed, after the list of the names of the witnesses is furnished to the prisoner, for the purpose of bringing testimony from the counties in which those witnesses live: For (the Court said) unless an opportunity were afterwards given to investigate the characters, and trace the conduct of the witnesses, it would be delusive and nugatory to furnish the list of their names. *U. S. v. Stewart and Wright*, 2 Dallas, 343.

*Vigol* was indicted for high treason, in levying war against the *United States*.

The prisoner was one of the most active of the insurgents in the western counties of *Pennsylvania*, and had accompanied the armed party, who attacked the house of the Excise officer, (*Reigan's*) in *Westmoreland* county, with

guns, drums, &c. insisted upon his surrendering his official papers, and extorted an oath from him, that he would never act again in the execution of the excise law. The same party then proceeded to the house of *Wells*, the excise officer in *Fayette* county, swearing that the excise law should never be carried into effect, and that they would destroy *Wells* and his house. On their arrival, *Wells* had fled, and concealed himself; whereupon they ransacked the house; burned it, with all its contents, including the public books and papers; and afterwards discovering *Wells*, seized, imprisoned, and compelled him to swear that he would no longer act as Excise officer. Witnesses were likewise examined, to establish, that the general combination and scope of the insurrection, were to prevent the execution of the excise law by force; and in the course of the evidence, the duress of the Marshal of the district, burning of *General Neville's* house, &c. were prominent features.

The case was submitted to the Court without argument.

*Patterson*, Justice. The first point for consideration is the *evidence*, which has been given to establish the case stated in the indictment; the second point turns upon the criminal intention of the party; and from these points (the evidence and intention) the law arises.

With respect to the *evidence*, the current runs one way: it harmonises in all its parts. It proves that the prisoner was a member of the party who went to *Reigan's* house, and, afterwards, to the house of *Wells*, in arms, marshalled, and arrayed; and who, at each place, committed acts of violence and devastation.

With respect to the *intention*, likewise, there is not, unhappily, the slightest possibility of doubt: To suppress the office of excise, in the fourth survey of this state; and particularly, in the present instance, to compel the resignation of *Wells* the excise officer, so as to render null and void, in effect, an act of Congress; construed the apparent, the avowed object of the insurrection, and of the outrages which the prisoner assisted to commit.

Combining these facts, and this design, the crime of *high treason* is consummate in the contemplation of the constitution and law of the *United States*.

And in the same case it was held, that if the *overt* act of treason is proved, and laid before the charge was presented, it is sufficient; and whether committed by the number of insurgents specified in the indictment, is immaterial. *U. S. v. Vigol*, 2 Dallas, 346; and see *U. S. v. Mitchel*, *ibid.* 348.

A new trial was granted in a case of treason, on account of the previous declarations of one of the jury. *U. S. v. Fries*. 3 Dallas, 515.

The following extracts from some late cases of great notoriety, are taken from *Cranch's Reports* in the Supreme Court of the *United States*, vol. 4.

To constitute a *levying of war*, there must be an *assemblage* of persons for the purpose of effecting *by force*, a treasonable purpose. *Enlistment* of men to serve against government is not sufficient.—

When war is levied, all those who perform any part, *however minute*, or *however remote* from the scene of action, and who are actually *leagued in the general conspiracy*, are traitors.—

Any assemblage of men for the purpose of revolutionizing *by force* the government established by the United States, in any of its territories, although as a step to, or the means of executing some greater projects, amounts to *levying war*.—

The travelling of *individuals* to the place of rendezvous is not sufficient; but the meeting of particular *bodies of men*, and their marching from places of *partial*, to a place of *general rendezvous*, is such an assemblage as constitutes a *levying of war*. *Ex parte Bollman and Swartwout*, 4 Cranch, 75, to 137.

So, in the case of *United States v. Burr*. 4 Cranch, appendix, 471 to 507.

To *levy war*, is to *raise, create, make or carry on war*. *Ib.* 471.

If an army be actually raised for the avowed purpose of carrying on open war against the United States, and subverting their government, a commissary of purchases, who never saw the army, but who, knowing its object, and leaguering himself with the rebels, supplies that army with provisions, is guilty of an *overt act of levying war*. *Ib.*

So is a recruiting officer, who, though never in camp, executes the particular duty assigned to him. *Ib.*

The term "*levying war*," is used in the constitution of the United States, in the same sense in which it was understood in *England*, and in this country to have been used in the statute of 25 Edw. 3, from which it was borrowed.

All those who perform the various and essential military parts of prosecuting the war, which must be assigned to different persons, may be said to *levy war*. *Ib.* 473.

Those who *perform a part* in the prosecution of the war, may be said to *levy war*, and commit treason under the constitution. *Ib.* 473.

But *quere*, whether he who counsels and advises, but performs no act in prosecution of the war; or, who being engaged in the conspiracy, fails to perform his part, can be said to *levy war*? *Ib.*

If the war be actually levied, if the accused has performed a part, but is not *leagued in the conspiracy*, and, has not *appeared in arms* against his country, he is not a traitor. *Ib.* 475, both circumstances must concur, *Ib.*

*Constructive treason* is where the direct and avowed object, is not the destruction of the sovereign power. *Ib.* 476-7-8-9.

Where a body of men are *assembled* for the purpose of making war against the government, and are in a condition to make that war, the assemblage is an act of *levying war*. *Ib.* 476.

The assemblage of men which will constitute *levying war*, must be a "Warlike Assemblage" carrying the appearance of *force*, and, in a situation to *practise hostility*. *Ib.* 480.

An assemblage of men with a treasonable design, *but not in force*, nor in a condition to attempt the design, nor attended with *warlike appearances*, does not constitute the fact of *levying war*. *Ib.* 482.

To assemble an army of 7000 men is to place those who are assembled, in a *state of force*. *Ib.* 484.

The travelling of several individuals to the place of rendezvous, either *separately* or *together*, but not in *military form*, would not constitute *levying war*; the act must be unequivocal, and have a *warlike appearance*. *Ib.* 485.

War can only be levied by the employment of *actual force*. Troops must be embodied, men must be openly assembled. *Ib.* 487.

*Arms* are not an indispensable requisite to *levying war*; nor the *actual application of force to the object*. *Ib.* 488.

It is not sufficient that an indictment for treason allege generally, that the accused *had levied war* against the United States. The charge must be more particularly specified by laying an *overt act of levying war*, and this *overt act* must be proved as laid. *Ib.* 490.

A person may be concerned in a treasonable conspiracy, and yet be *legally*, as well as *actually absent* while *some one act of treason* is perpetrated. *Ib.*

Every one concerned in a treasonable conspiracy is not constructively present at every *overt act* of the treason committed by others not in his presence. *Ib.*

A man may be legally absent who has counselled or procured the treasonable act. *Ib.* 491.



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The prisoner can only be convicted upon the *overt* act laid in the indictment. If other *overt* acts can be inquired into, it is for the sole purpose of proving the particular fact charged. *Ib.* 493.

A person cannot be constructively present at an *overt* act of treason, unless he be *aiding and abetting at the fact, or, ready to afford assistance if necessary.* *Ib.* 493-4.

He who counsels, procures, or aids treason, is guilty *accessorily*, and solely in virtue of the common law principle, that what will make a man an *accessary* in felony, makes him a *principal* in treason. So far from considering a man as constructively present at every *overt* act of the general treason in which he may have been concerned, the whole doctrine of the books limits the proof against him to those particular *overt* acts of levying war with which he is charged. *Ib.* 494.

And a person in one part of the United States cannot be considered as *constructively* present at an *overt* act committed in a remote part of the United States. *Ib.*

The presence of a party, where presence is necessary to his guilt, is part of the *overt* act, and must be proved by *two witnesses.* *Ib.* 499.

An indictment charging a person with being present at an *overt* act of treason, cannot be supported by proving only that the person accused caused the act to be done by others in his absence. No presumptive evidence; no facts from which presence can be inferred will satisfy the constitution and the law. *Ib.*

The part which a person takes in the war constitutes the *overt* act, on which alone he can be convicted. *Ib.* 501.

It possibly may be the case (the Chief Justice adds) that those who procure a treason, and do nothing further, are guilty under the constitution; I only say, that opinion has not yet been given; still less has it been indicated, that he who advises shall be indicted as having performed the fact. And with respect to admitting proof of procurement to establish a charge of actual presence, the court is of opinion, that if this be admissible in *England* on an indictment for levying war, which is far from being conceded, it is admissible only by virtue of the operation of the common law upon the statute, and therefore is not admissible in this country, unless by virtue of a similar operation; a point far from being established, but on which, for the present, no opinion is given. If,

however, this point be established, still the procurement must be proved in the same manner, and by the same kind of testimony which would be required to prove actual presence. *Ib.* 502.

The conviction of some one who has committed the treason must precede the trial of him who has advised or procured it, and the right of the prisoner to call for the record of conviction, is not waived by pleading to the indictment. *Ib.* 504.

*Quere*, whether the crime of advising or procuring a levying of war, be within the constitutional definition of treason? *Ib.*

If the *overt* act be not proved by *two witnesses*, so as to be submitted to the *Jury*, all other testimony is irrelevant. *Ib.* 505-6.

Levying war is an act compounded of law and fact, of which the *Jury*, aided by the court, must judge. *Ib.* 506.

Appearing at the head of an army, would be an *overt* act of levying war. So also, detaching a military corps from it, for military purposes. *Ib.*

The cases from which the foregoing extracts are taken, run into great length, so that it was impossible to insert them entire. The editor thought it his duty to insert so much, that those who incline to consult the cases at large may have a ready reference to them. It is true they have already greatly agitated the public mind; but it is humbly hoped that the period may never occur, when it shall be necessary to reconsider, or confirm a single point of them.

See post. chap. 773, sect. 4 All subjects of this state, serving the enemy, as civil or military officers, voluntarily, at any time during the continuance of the war, declared to be attainted of high treason.

By the 3d section, preceding, all other persons, subjects or inhabitants of this state, aiding the enemy, and not surrendering themselves on the day fixed by proclamation, which the executive council were authorized to issue, declared to be attainted of high treason. See 1 Dallas, 59.

By the constitution of the *United States*, a person charged in any state with treason, &c. who shall flee from justice, and be found in another state, shall on demand of the executive authority of the state from which he fled, be delivered up, to be removed to the state having jurisdiction of the crime. Art. 4, sect. 2.

## CHAPTER DCCXXXVI.

1777.

*An ACT to revive and put in force an act, entitled An Act to regulate the fishery in the river Schuylkill.*

WHEREAS by an act of General Assembly of the province of Pennsylvania, passed the ninth day of March, in the year of our Lord one thousand seven hundred and seventy-one, entitled *An act to regulate the fishery in the river Schuylkill*,\* the shad fisheries were put under certain regulations, that have been found to be very advantageous to the inhabitants residing near the said river: And as the said act is expired by its own limitation, and as the season for such fishery is approaching, such act ought to be in force:

\* Ante. chap 621. See also chap. 465. ante. pa. 235. and the notes thereto subjoined.

II. *Therefore, be it enacted, and it is hereby enacted,* That the act of General Assembly of the province of Pennsylvania, entitled *An Act to regulate the fishery in the river Schuylkill*, and every part, parcel, article, matter and clause, therein contained, are hereby declared to be in force and binding on all the inhabitants of this state; and all Justices, Constables and other officers, who may be in any wise concerned in the execution of the said act, are hereby strictly enjoined and required to yield obedience thereto, according to the duties of their several offices, and to do and perform all and singular the services and duties by the said act of them required to be done and performed, as they will answer the contrary at their peril.

The act to regulate the fishery, &c. continued,

III. *And be it further enacted,* That the aforesaid act of General Assembly, and the regulations and restrictions therein mentioned, contained and comprised, shall be deemed, taken and construed to extend down the river Delaware as far as the Island called the Province Island extends, any thing in the said recited act to the contrary notwithstanding.

and shall extend to the Province Island.

Passed 14th March, 1777.—Recorded in Law Book vol. I. page 92.

## CHAPTER DCCXXXVII.

*An ACT for establishing in the city of Philadelphia, and in each county of this state, an office for the probate and registering of wills, and granting letters of administration, and an office for the recording of deeds.*

A CHANGE of government in the state of Pennsylvania having taken place, the powers of the several officers under the late government have thereby ceased, and become void: It therefore becomes necessary, for the security and well-being of this commonwealth, that an office of record, for the probate of wills and granting letters of administration, commonly called the Register's office, and an office of record, for recording of deeds, should be at all times kept in each city and county, as the present constitution directs:

[See ante. pa. 33. chap. 133, and the notes thereto subjoined.]

III. *And be it further enacted,* That the persons herein and hereby appointed to the offices aforesaid, before they enter on the duties of their respective offices, shall severally take the oath or affirmation,

The sums in which security is to be given by the several Re-



1777. agreeable to the said constitution, and give bond to the Speaker of the House of Assembly for the time being, with one or more sufficient sureties, in the following sums respectively, that is to say: the Register for the city and county of Philadelphia, in the sum of one thousand pounds; the Recorder of deeds for the said city and county of Philadelphia, in the sum of fifteen hundred pounds; the Register and Recorder of deeds for the county of Bucks, in the sum of one thousand pounds; the Register and Recorder of deeds for the county of Chester, in the sum of fifteen hundred pounds; the Register and Recorder of deeds for the county of Lancaster, in the sum of fifteen hundred pounds; the Register and Recorder of deeds for the county of York, in the sum of twelve hundred pounds; the Register and Recorder of deeds for the county of Cumberland, in the sum of twelve hundred pounds; the Register and Recorder of deeds for the county of Berks, in the sum of one thousand pounds; the Register and Recorder of deeds for the county of Northampton, in the sum of one thousand pounds; the Register and Recorder of deeds for the county of Bedford, in the sum of six hundred pounds; the Register and Recorder of deeds for the county of Northumberland, in the sum of six hundred pounds; and the Register and Recorder of deeds for the county of Westmoreland, in the sum of six hundred pounds; which said bonds shall severally be conditioned for the true and faithful execution of their several and respective offices, and for delivering up the records and other writings belonging to the said respective offices whole, safe and undefaced, to their successors in the said offices.

Powers, &c.  
of the offi-  
cers.

[\* Fees regu-  
lated post.  
chap. 1852.]

They are to  
deliver up the  
records to  
their succes-  
sors.

Registers  
shall appoint  
deputies.

President  
and Council  
may appoint  
in case of va-  
cancy.

IV. *And be it further enacted,* That the several and respective officers, appointed by this act, shall have, use and exercise all the powers, and be subject to, and governed by, the laws of this state, in all things concerning their said offices respectively; and may take and receive the same fees,\* as by the said laws the late Registers and Recorders of deeds ought or might have received and taken.

V. *And be it further enacted,* That each and every of the Registers and Recorders of deeds herein appointed, and their heirs, executors and administrators, and every of them, are hereby required and enjoined to deliver up to the person who shall be appointed to succeed them in the said offices respectively, all the records and other writings, and also the seals, belonging to the several offices aforesaid, whole, safe and undefaced, under the penalty of three thousand pounds, to be recovered as other fines are directed to be recovered within this state.

VI. *And be it further enacted,* That every Register for the probate of wills, and granting letters of administration, by this act appointed, or that may be hereafter appointed, may and shall keep a deputy, to officiate in his absence, for whose conduct the Register, that shall so appoint him, shall be accountable. And every such deputy is hereby declared to be able and capable in law to take probate of wills and grant letters of administration as aforesaid, and to do whatever else by the laws of this state appertains to the said office: And if any Register or Recorder of deeds, by this act appointed, shall resign his office, remove out of the county, die, or otherwise become incapable of executing both or either of the said

offices, as directed by the laws aforesaid, then, in either of the said cases, the President and Council, for the time being, shall, as soon as may be, appoint and commissionate another person to be Register and Recorder in the stead of such Register and Recorder as shall so resign, remove, die, or otherwise become incapable as aforesaid; and every person, so appointed and commissioned as aforesaid, shall be deemed and taken to be the proper Register and Recorder for the county for which he shall be so appointed and commissioned, until further order be taken in the premises by the General Assembly of this state.

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VII. *Provided always, and be it further enacted,* That the officers, by this act appointed, and called Registers, in each county respectively, shall not be accountable to any other Register as their superior; and that so much of the laws of this state as relates to the Register-General's office, which by this act is altered and supplied, is hereby declared to be repealed, and made null and void. And inasmuch as the detention of the books, records and other papers, and seals, in the office of Register and in the office of Recorder of deeds, may be very injurious to many of the inhabitants:

VIII. *Be it therefore enacted,* That if any or either of the officers that have last held and kept the said office or offices, shall refuse to deliver up the said books, records and other papers, and seals of office, safe, and in good order, to the persons by this act for each county respectively appointed, and complaint shall be thereof made to any one Justice of the county where such refusal shall be made, such Justice shall issue his warrant, in the nature of a *capias*, causing such officer to be brought before him; and if the complaint shall be supported with good evidence, the said Justice shall commit the said Register or Recorder to the common gaol of the county, there to remain, without bail or main-prize, until the said books, records and other papers, and the said seals of office, shall be delivered up as aforesaid.

IX. *And be it further enacted,* That if any of the officers named in this act shall neglect or refuse to take the oaths or affirmations prescribed by the constitution of this state, and otherwise qualify himself as is by this act directed, for the space of ten days after he shall be informed of his appointment, if on the east side of the river Susquehanna, and within thirty days, if on the west side of said river, the President and Council shall appoint and commissionate some fit person to be the officer in his stead.

Passed 14th March, 1777.—Recorded in Law Book vol. I. page 93.



# A C T S

OF THE

## General Assembly of Pennsylvania.

Passed at a Session, which commenced October 27th, 1777, and ended January 2d, 1778; and at a Session which commenced February 18th, 1778, and ended April 2d, following, except chap. 748, which was passed at a preceding Session.

1777.

THOMAS WHARTON, PRESIDENT OF THE EXECUTIVE COUNCIL.  
JOHN BAYARD, SPEAKER OF THE GENERAL ASSEMBLY.

### CHAPTER DCCXLVIII.

[Printed at  
large, vol. 1.  
folio, pa. 740.  
vol. 2, 8vo.  
pa. 156.]

*An ACT to re-establish the ancient Corporation of the Burgesses and inhabitants of the borough of Lancaster, in the county of Lancaster.*

**SECTION II.** The President or Vice-President to appoint Burgesses, Assistants, High Constable, Town Clerk, and Clerk of the Market—to continue until next election, &c. of such officers; who are to take the oath of allegiance. [Obsolete.] 3. The rights under the original charter restored, and all former estates and contracts to remain good, and former actions, wherein the corporation were plaintiffs or defendants, commenced and undetermined, revived and continued. 4. The old seal to be destroyed, and a new seal to be made.

Local Act.—Passed June 19th, 1777.—Recorded in Law Book vol. I. pa. 131. (*d*)

(*d*) See ante. chap. 306, 687, and in the borough of Lancaster, (post. an act for establishing a nightly watch chap. 1617.)

### CHAPTER DCCLX.

[Printed at  
large vol. 1.  
folio, pa. 704.  
vol. 2, 8vo.  
pa. 156.]

*A SUPPLEMENT to the act, entitled An Act for emitting the sum of one hundred and fifty thousand pounds in bills of credit, on loan, and providing a fund for the payment of public debts.*

**IV.** And be it further enacted, That the Trustees, in and by this act appointed, shall have power and authority to prosecute and pro-

ceed for default of payment against all and every the persons to whom the said monies, or any part thereof, have been lent in like manner, and to the same effect, as in and by the said before recited act is enjoined and directed to the Trustees in and by the said act appointed; and all other the powers and authorities, which to the former Trustees, or any of them, in and by the said recited act of Assembly was committed or entrusted.

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VII. *And be it further enacted*, That in case of the death, refusal or removal of either, or any or all the said Trustees, it shall and may be lawful for the General Assembly for the time being, by their resolve, to be entered on their minutes, to nominate and appoint others in their stead and room.

Assembly  
may re-ap-  
point new  
Trustees by  
resolve.

VIII. *And be it further enacted*, That every thing in the said before recited act contained, which is not consistent with this present act, from henceforth shall be, and hereby is, repealed and made void.

Repeal.

Passed 23d December 1777.—Recorded in Law Book vol. I. page 150. (e)

(e) The duties prescribed in the fourth section are now transferred to the State Treasurer, after having been vested in the Managers of the Pennsylvania Hospital, by an act passed April 4th 1805, (post. chap. 2600)—and see the original act, ante pa. (chap. 672, and the notes thereto subjoined.)

pointed new Trustees in the room of the original Trustees, who had neglected or refused further to act, and prescribed an oath or affirmation to be taken by them, and directed them to retain the monies paid in, until the further orders of the General Assembly, &c. is obsolete.

The residue of the act, which ap-

## CHAPTER DCCLXV.

*An ACT for establishing a new seal for the Supreme Court, and for altering the place of holding the said Court, and the courts of Oyer and Terminer, and General Gaol Delivery, in the counties of Chester and Bucks, for a limited time.*

WHEREAS, since the late glorious revolution, it is become expedient and proper to have a new seal for the Supreme Court, and the Courts of Oyer and Terminer and General Gaol delivery of this state: *Be it enacted, and it is hereby enacted*, That a new seal shall be procured and made, under the direction of the Prothonotary or Clerk of the said Supreme Court, having the arms of the state engraven thereon, with such other devices as the Justices of the said Court shall direct, with an inscription round the edge, and near the extremity thereof in these words, to wit: *Seal of Supreme Court of Pennsylvania*, and with the figures 1776 underneath the arms; and that the same, from and after the receipt thereof by the Prothonotary of said Court, shall be the seal of the said Courts, and used as such upon all occasions whatsoever; the expense of which seal shall be paid for by a draught of the Prothonotary upon the Treasurer of this state, who is hereby directed to pay the same out of the public monies in his hands: And the seal of any of the Justices of the said Courts is hereby established as the seal of the said

New seal  
and device.



1778. Courts, until such new seal shall be made and received by the said Prothonotary.

Passed 2d January, 1778.—Recorded in Law Book vol. I. page 155. (f)

(f) The remaining sections of the act merely provided for holding the Supreme Court at such places as the Judges should direct, while the British army kept possession of Philadelphia. For a general reference to the judicial laws, see chap. 255; and to the penal laws, see chap. 236.

## CHAPTER DCCLXVI.

*An ACT to prevent the imprisonment of soldiers for small debts; and also to prevent the inlistment of soldiers within the bounds of the Commonwealth of Pennsylvania, by any officers of the other states, until the quota of this state be completed.*

WHEREAS it would be highly injurious to the common cause of this and the other United States of America, in our present necessary defence, to permit the imprisonment of soldiers for small debts: Therefore,

II. *Be it enacted, and it is hereby enacted,* That no soldier duly inlisted in the service of this or any other of the United States of America, shall be arrested or imprisoned by virtue of any writ or other process for debt or any breach of civil contract, issuing out of any court, of law or other legal jurisdiction within this Commonwealth, unless there be indorsed on the said writ, or other process, an affidavit, on oath or affirmation, that the defendant therein named, is justly indebted to the plaintiff therein mentioned, in a sum of money exceeding fifty dollars; and in case it shall happen that any soldier, so *bona fide* inlisted, and in actual service, shall be so arrested, the Justices of the Supreme Court of this Commonwealth, and the Justices of the Peace of the several counties thereof, and each and every of them, is hereby enjoined, impowered and required, upon application of the said soldier or his officer or officers, to discharge the said soldier from the said arrest or imprisonment: And all Sheriffs and other officers are hereby enjoined and required, that they do not arrest any persons whom they may or shall know to be regularly inlisted soldiers, unless such affidavit be endorsed on the said process, under the penalty of twenty pounds, to be recovered by the said soldier or the commanding officer of the company to which he belongs, by action of debt, in any Court of record within this state.

No soldier to be arrested, unless affidavit of debt above fifty dollars.

Passed 2d January, 1778.—Recorded in Law Book vol. I. page 156. (g)

(g) In Mr. Dallas's edition, vol. 1, pa. 749—it is said, the operation of this act ceased with the war—It is not printed in that edition, and is also omitted in the last 8vo. edition—But in consequence of the following case, the Editor has deemed it to be his duty to restore the act to its place in this edition.

At Nisi Prius at Wilkes-Barrè, May Assizes, 1792. *Coram M'Kean, C. J. and Yeates, J.*

*Thomas Wright v. John Quinn.*

A motion was made to discharge John Quinn, a soldier enlisted by Capt. John Cook, in the service of the United States, from his imprisonment, under the act of Assembly of January 2d, 1778.

It appeared that he had been arrested under the warrant of *John Paul Schott, Esq.* a Justice of the Peace, at the suit of *Thomas Wright*, after his inlistment; and that the Justice had given judgment, and issued execution against him for 56s. debt, and 6s. and 6d. costs, under which he was confined.

He was now brought up by rule of court, and the agent of the creditor directed to attend.

On the part of the creditor, his counsel objected to the discharge; and contended, that the reasons contained in the preamble of the act, ceased to operate. *America* is now at peace with *Great Britain*, and the object of the present war, is merely to quell the incursions and ravages of a few restless savages. Besides, the act speaks of soldiers inlisted in the service of this, or any other of *these United States*; and, moreover, the operations of the Federal Government must be supposed virtually to have repealed this law. The present matter is to be considered as a dispute between the Federal Government and the creditor, which ought to be determined only in the Federal Courts.

But, *By the Court*, it was found expedient for the common welfare to supersede the interests of individuals, who claimed debts of soldiers to a certain amount. The resolve of congress of the 26th December, 1775, declares that no soldier shall be arrested for a debt under 35 dollars. The act of assembly of January 2d, 1778, raises it to fifty dollars, the former sum having been thought inadequate to the object in view. When this law was passed, each state furnished its own quota of troops; under the present federal government, the *United States* at large raise the army. *America* was then engaged

in a war with *Great Britain*: But though this is not now the case, yet the reason of the law still subsists, though not in so strong a degree as at that period. It is, however, of the utmost consequence that the inlistments of the troops now intended to be raised, should be completed. The general enacting words of the act cannot be controlled by the preamble, nor are they restricted by any subsequent clause.

The articles of war, which are now incorporated into the general system of the Union, by the act of congress passed the 30th day of April, 1790, gives a power to officers to *detain* soldiers not owing the sum of thirty-five dollars. And there is nothing that we know of in the federal government, which repeals or alters this resolve of congress, either expressly, or virtually.

The act of assembly of January 1778, must therefore be considered *in full force*. But this does not relate to judicial process, which on the face of it ascertains the plaintiff's demand. The soldier here, having been arrested by *mesne* process, after he was inlisted, is within the words of the act, and unless that arrest was legal, the subsequent proceedings cannot be supported. The soldier and creditor are citizens of the same state, and the case is certainly cognizable before us.

We are therefore of opinion that the soldier be discharged: But strongly recommend, that he should give an order on his officer for ten shillings per month, to be stopped out of his pay, until the debt and costs are discharged. This was accordingly done, and the order accepted by the captain. MSS. Reports.

(The third and fourth sections are obviously obsolete.)

## CHAPTER DCCLXXIII.

*An ACT for the attainder of divers traitors, if they render not themselves by a certain day, and for vesting their estates in this commonwealth; and for more effectually discovering the same; and for ascertaining and satisfying the lawful debts and claims thereupon. (h)*

WHEREAS Joseph Galloway and Andrew Allen, Esquires, late Members of the Congress of the thirteen United Colonies, now

(h) By chap. 307, 842, the attainder of Reynold Keen is annulled. A part of Joseph Galloway's estate appropriated to public use, (chap. 818,) but afterwards directed to be sold, (chap.

1214). By chap. 821, post. provision is made for the immediate sale of the estates forfeited by the act in the text; for satisfying *bona fide* claims of creditors against them; and for assuring the



1778. States, of America, for Pennsylvania; John Allen, Esquire, late member of the Committee of Inspection and Observation for the city and liberties of Philadelphia; William Allen, the younger, Esquire, some time a captain, and afterwards a Lieutenant Colonel of a regiment or battalion of foot, in the service of the said United Colonies, now States of America; James Rankin, late of the county of York, yeoman; Jacob Duche, the younger, late Chaplain to the Congress; Gilbert Hicks, late of Bucks county, yeoman; Samuel Shoemaker, late alderman of the city of Philadelphia; John Potts, late of Philadelphia county, yeoman; Nathaniel Vernon, late Sheriff of Chester county; Christian Fouts, late Lieutenant Colonel of Militia of the county of Lancaster; Reynold Keen, late of the county of Berks, yeoman; and John Biddle, late of the same county, yeoman, late collector of excise for the said county, and a deputy quarter master in the army of the United States, being all subjects and inhabitants of the state of Pennsylvania, have most traitorously and wickedly, and contrary to the allegiance they owe to the said state, joined and adhered to, and still do adhere to, and knowingly and willingly aid and assist, the army of the king of Great-Britain, now enemies at open war against this state and the United States of America, and yet remain with the said enemies in the city and county of Philadelphia, where they daily commit divers treasonable acts, without any sense of honour, virtue, liberty or fidelity to this state.

Persons here-  
in named, not  
surrendering  
themselves  
before the  
twentieth of  
April,

II. *Be it therefore enacted, and it is hereby enacted,* That if the said Joseph Galloway, John Allen, Andrew Allen, William Allen, the younger, James Rankin, Jacob Duche, Gilbert Hicks, John Potts, Nathaniel Vernon, Christian Fouts, Samuel Shoemaker, Reynold Keen, and John Biddle, shall not render themselves respectively to some or one of the Justices of the Supreme Court, or of the Justices of the Peace of one of the counties within this state, on or before the twentieth day of April next ensuing, and also abide their legal trial for such their treasons, then every of them, the said Joseph Galloway, John Allen, Andrew Allen, William Allen, James Rankin, Jacob Duche, Gilbert Hicks, John Potts, Nathaniel Vernon, Christian Fouts, Samuel Shoemaker, Reynold Keen, and John Biddle, not rendering himself as aforesaid, or not abiding the trial aforesaid, shall, from and after the said twentieth day of April next, stand and be adjudged, and by the authority of this present act be convicted and attainted of high treason, to all intents and purposes whatsoever, and shall suffer and forfeit as a person attaint of high treason by law ought to suffer and forfeit.

shall be at-  
tainted of  
high treason.

All other per-  
sons aiding  
the enemy,  
not surren-  
dering them-  
selves on the  
day fixed by  
proclama-  
tion.

III. *And be it further enacted,* That all and every person and persons, being subjects or inhabitants of this state, or those who have real estates in this commonwealth, who now do adhere to, and knowingly and willingly aid and assist, the enemies of this state, or of the United States of America, by having joined their armies

title to purchasers, or compensating them, in cases of eviction by title paramount. By chap. 826, post. it is declared that judgments, &c. entered by warrant of attorney against any person attainted by the act in the text, or in

pursuance of a proclamation issued under the 3d section, shall be void and of no effect. For the general law against treason, and various adjudications upon the subject, see ante. chap. 729.

within this state, or elsewhere, or who hereafter shall do the same, and whom the Supreme Executive Council of this state, by their proclamations to be issued under the state seal, during the continuance of this war with the king of Great-Britain, shall name, and require to render themselves by a certain day, therein to be mentioned, to some or one of the Justices of the Supreme Court, or of the Justices of the Peace of one of the counties within this state, and also abide their legal trial for such their treasons, and shall not render themselves accordingly, and abide their legal trial aforesaid, shall, from and after the day to them to be prefixed by such proclamation, stand and be attainted of high treason, to all intents and purposes, and shall suffer such pains and penalties, and undergo all such forfeitures, as persons attainted of high treason ought to do; *Provided*, That the time to be prefixed by such proclamation, for the persons therein to be named to render themselves, be not less than the time and term of forty days, from and after the date of such proclamation.

1778.

shall be attainted of high treason.

[See 1 Dallas, 59.]

IV. *And be it further declared and enacted*, That all and every the subjects or inhabitants of this state, who, from and after the publication of this act, shall, at any time during the continuance of the said war, willingly and voluntarily serve the king of Great-Britain, either by land or sea, as a civil or military officer, soldier or seaman, shall be, and are hereby, attainted of high treason, and shall suffer and forfeit, to all intents and purposes, as persons attainted of high treason ought to do.

All subjects of this state serving the enemy as civil or military officers, guilty of high treason.

V. And whereas it is highly reasonable that the estates, real and personal, of the subjects or inhabitants of this state, who have engaged in the present most unnatural, unjust, barbarous and execrable war, and who shall be duly attainted as guilty of treason, should be discovered, and applied to the use of the state, and that provision be made for the satisfaction of all just and lawful claims, which any of the dutiful and faithful subjects of this state, or of any of the United States of America, or of any foreign state, not at war with the said United States, may have to the estates of such rebels and traitors, or against them, for any debt or demand whatsoever: *It is therefore enacted*, That all and every the lands, tenements, hereditaments, debts or sums of money, or goods or chattels whatsoever, and generally the estates, real and personal, of what nature or kind soever they be, within this state, whereof the aforesaid Joseph Galloway, John Allen, Andrew Allen, William Allen, the younger, James Rankin, Jacob Duche, Gilbert Hicks, John Potts, Nathaniel Vernon, Christian Fouts, Samuel Shoemaker, Reynold Keen, and John Biddle, or any of them, shall have been possessed of, interested in, or entitled unto, on the fourth day of July, in the year of our Lord one thousand seven hundred and seventy-six, or at any time afterwards, in their own right, or to their use, or which any other person or persons shall have been possessed of, interested in, or entitled unto, to the use of, or in trust for them, or any of them, shall, according to the respective estates and interests which the persons aforesaid, or any in trust for them, or any of them, shall have had therein, stand and be forfeited to this state, from and after the said twentieth day of April next ensuing, unless they shall respectively render themselves on or before the same day, and abide their

Estates real and personal of the persons herein named forfeited,

unless they surrender themselves:



1778.

and of all  
other per-  
sons holding  
to their use.

legal trial, as herein before is directed ; and that all and every the lands, tenements, hereditaments, debts, or sums of money, and goods and chattels whatsoever, and generally the estates, real and personal, of what nature or kind soever they be, within this state, which any other person or persons, who shall be attainted of high treason, by virtue or in consequence of this act, shall have been possessed of, interested in, or entitled unto, on the aforesaid fourth day of July, in the year of our Lord one thousand seven hundred and seventy-six, or at any time afterwards, in their own right, or to their use, or whereof any other person or persons shall have been possessed of, interested in, or entitled unto, to the use of, or in trust for, them; or any of them, shall, according to the respective estates and interests which the persons to be attainted as aforesaid, or any in trust for them, shall have had therein, or might forfeit by such attainder, stand and be forfeited to this state, without any office or inquisition thereof hereafter to be taken or found.

President,  
&c. to en-  
quire into  
forfeited es-  
tates.

VI. *And be it further enacted,* That the President or Vice-President, and Supreme Executive Council of this state, shall enquire into all such estates, both real and personal, as shall be hereby vested, or are intended to be vested in this state ; and cause all the rents, issues and profits of the said real estates, until sale thereof, to be levied and paid to the State Treasurer, for the time being, who is to account for the same as for other public monies, and seize, or cause to be seized and sold, all such goods and chattels, and collect and receive, or cause to be collected, all such debts and sums of money, as shall be hereby vested in the state ; and sell, and, under the hand of the President or Vice-President, and the state seal, convey the said real estates, after the claims relating to them respectively shall be determined, or otherwise dispose of the same, in the manner herein after provided ; and out of the produce of the said estates, real or personal, shall cause payment to be made of such money as shall be due to any claimants upon the same as aforesaid.

and shall  
sell and con-  
vey them un-  
der the state  
seal ;

and appoint  
agents, &c.

And the said President or Vice-President, and Supreme Executive Council, shall from time to time, as occasion shall require, appoint agents or factors, surveyors, messengers, or other necessary officers or persons, for the execution of this act, who are to execute their trust, without taking any thing for their service (other than such fees, salaries and rewards, as the said President or Vice-President and Council shall direct and allow in that behalf) and every such person or officer, before he enters on the execution of his employment, shall take the oath or affirmation of allegiance and fidelity, unless he hath already done so, prescribed by an act of General Assembly passed the thirteenth day of June last, and also an oath for his faithful demeanour in all things relating to the trust reposed in him, and that he will not, directly or indirectly, take any fee or reward, or accept the promise of any, for any thing to be done by him in the execution of said trust (except what shall be allowed as aforesaid) and that he will not, directly or indirectly, have any part or interest in, or make any benefit by, discovery of any forfeited or forfeitable estate or interest, intended to be applied to the use of the state, or conceal, or cause, or willingly permit to be concealed, the same, or any part thereof.

who shall  
take the  
oaths or  
affirmations.

**VII.** *And be it further enacted,* That the President or Vice-President and Council may send, upon oath or affirmation of suspicion being first made, their precepts for such persons, books, papers, writings and records, as they shall think necessary for their information in any matters subject to their inquiry by virtue of this act, without any fee to be paid for the same, and may detain such books or writings so long as they shall have occasion, and then return them to the persons to whom they belong; and may administer oaths or affirmations, for the discovery of the truth of the enquiries, to the parties concerned, or to any other persons whatsoever; and that all Sheriffs, Constables, and other officers and ministers, shall execute such precepts and orders, as shall be sent to them by the said President or Vice-President and Council, as they will answer the contrary at their perils; and the said President or Vice-President and Council may and shall proceed in their enquiries in a summary way, upon the testimony of witnesses and examination of persons interested, upon their oaths or affirmations, inspection and examination of deeds, writings and records, or by all or any the said ways, or otherwise, according to their discretions, as soon as conveniently may be; and shall make a register of the names of all such persons attainted, or to be attainted, of high treason, by virtue of this act, and of all real and personal estates and interests, by this act, or otherwise, vested in this state by reason of such attainder; and by whom such estates were respectively forfeited, and what interest every such person, as aforesaid, had in any of the premises, on the fourth day of July, in the year of our Lord one thousand seven hundred and seventy-six, or at any time afterwards, and by what tenures the same were respectively holden, and of all incumbrances to which the said estates were subject before and upon the same day: and if any person, summoned to appear before the said President or Vice-President and Council, for discovery of the premises, shall neglect to appear or be examined, as aforesaid, the said President or Vice-President and Council shall commit such person to the common gaol of the county, there to remain, without bail or main-prize until he shall submit to be examined; and if any officer shall neglect to give obedience to such precepts or orders, the said President or Vice-President and Council may and shall impose any fine on him, not exceeding one hundred pounds for any one offence, and shall commit him, till the fine shall be paid unto the State Treasurer, for the use of the state.

1778.

Powers given to the President and Council.

Registers to be made of the names of the persons and of estates forfeited.

**VIII.** *And be it further enacted,* That every person who shall make a full discovery to the said President or Vice-President and Council of any concealed debt or sum of money, payable unto any person or persons so attainted, or to be attainted, as aforesaid, (not being a debt by judgment, mortgage, recognizance, or any registered bond or contract) and shall pay three fourths thereof, before the expiration of three months after such attainders, respectively, unto the State Treasurer, for the use of the state, shall be discharged of the entire debt or sum of money aforesaid; but every person, indebted as aforesaid, who shall neglect to make such discovery within the time aforesaid shall forfeit double the value of such debt or sum of money, to be recovered by action, bill, suit or in-

Encouragement for discoveries of traitors debts and effects.



1778.

formation, for the use of the state; and all persons who shall be possessed of any personal goods or chattels, belonging to any such persons attainted, or to be attainted, as aforesaid, when the same shall be forfeited, or at any time afterwards, are hereby strictly charged to discover the same to the said President or Vice-President and Council, within three months after the said attainder, who shall thereupon allow to every such person such proportion as they shall think reasonable for such discovery, not exceeding one full fourth part of the said goods and chattels, or the proceeds thereof; but every person having such goods and chattels in his custody or power, and neglecting to discover the same within the term aforesaid, shall forfeit double the value thereof, to be recovered for the use of the state, as aforesaid; and the said President or Vice-President and Council are empowered to make such compositions or agreements, touching any such debts, or personal goods and chattels, so to be discovered, as they shall think fit and reasonable; and the same shall be valid in law, so as the composition money be paid to the said State Treasurer, for the use of the state, within the times limited by them; and where any of the said debts are secured by bonds or obligations, with penalties, or are due upon accounts not adjusted, the said President or Vice-President and Council are authorised to state and determine the same; and every person, not being so indebted, or possessed of such personal goods and chattels, who shall at any time after one month, and before the expiration of four months, after such attainders respectively, discover any such debts, or personal goods and chattels, concealed until the time of such discovery, shall be entitled to so much as the said President or Vice-President and Council shall judge sufficient, not exceeding one fourth of such debts, or of such personal goods and chattels, or of the value thereof, after recovery of the same, to be paid over to him by warrant of the said President or Vice-President and Council, from time to time, on the Treasurer; and every person who shall, from and after the expiration of one month, and before the expiration of six months, after such attainders respectively, discover any lands, tenements, rents, hereditaments and chattels real, forfeited as aforesaid, and concealed until the time of such discovery, shall be entitled to such proportion of said lands, tenements, rents, hereditaments, and of chattels real, as the President or Vice-President and Council shall judge to be reasonable, not exceeding one fourth part thereof, or of the value, after recovery; and the President or Vice-President and Council shall deliver certificates, under their hands and seals, to every person who shall make such discoveries, specifying the lands, tenements, hereditaments, chattels, or real estates, by him so discovered, and the proportion thereof, or of the value he ought to have, in respect thereof; and shall cause to be paid, delivered or conveyed by the President or Vice-President, under the state seal, such parts and proportions to the said discoverers, their heirs, executors, administrators and assigns, respectively; and that as soon as conveniently may be after the time shall be elapsed for entering claims, in manner herein after mentioned, on the estates real or personal, so discovered, as for such estates real or personal, upon which no claim shall be entered; and as soon

President,  
&c. empow-  
ered to make  
composi-  
tions.

Encourage-  
ment for dis-  
covery of  
real estates.

as conveniently may be after such claims as shall be entered, relating to such estates real or personal respectively, shall be determined. 1778.  
*Provided always,* That the shares of the estates, real or personal, that shall be allowed to the discoverers, do suffer a deduction proportionable to the claims respectively which shall be made and affirmed thereout. Proviso.

**IX.** *And be it further enacted,* That the President or Vice-President and Council shall, as soon as conveniently may be, secure all the goods and personal chattels of the said Joseph Galloway, John Allen, Andrew Allen, William Allen, the younger, James Rankin, Jacob Duche, Gilbert Hicks, John Potts, Nathaniel Vernon, Christian Fouts, Samuel Shoemaker, Reynold Keen, and John Biddle, and also all goods and personal chattels of the person or persons to be named in any proclamation, to be issued as herein before directed, as soon as conveniently may be after the date of such proclamation, in such places, and in the custody of such persons, as shall be thought most proper for preventing the perishing, or any loss or embezzlement thereof; and shall make inventories thereof, containing a particular account of all such goods and chattels, to whom they belonged, and when and by whom they were delivered to the said President or Vice-President and Council, or persons by them appointed to receive them; and they shall also, as soon as conveniently may be, from and after the day fixed by this act, or to be prefixed by the proclamations aforesaid, for the said rebels and traitors to render themselves and abide their legal trial, if they do not render themselves accordingly, cause appraisement thereof to be made upon the oaths or affirmations of any two persons, to be appointed by them for that purpose, and shall sell, or cause to be sold, all such goods and chattels, so inventoried and appraised, and for that purpose shall cause public notice to be given, ten days at least, of the times and places of sale, and of the several particulars to be sold; and the same shall be sold by auction to the best bidder; and they shall cause an entry to be made of the goods and chattels so sold, the buyers names and places of abode, and the prices; and the said President or Vice-President and Council shall give a certificate, under their hands and seals, unto the buyers, expressing the particulars, prices, and time of sale, and shall forthwith order the particulars bought and paid for to be delivered to the buyers, or their assigns. President, &c. to secure and sell the goods of the persons herein named, and of others attainted in pursuance of proclamations.

**X.** *And be it further enacted,* That the President or Vice-President and Council may and they are hereby empowered to let, or by factors or agents, by them to be appointed as aforesaid, cause to be let, the said forfeited real estates, for any time not exceeding two years, and shall receive the rents, grant acquittances thereof, pay the land taxes thereout, and do all things necessary for managing the said estates, until the same shall be sold in manner herein after directed. And to let, &c. the real estates.

**XI.** *And be it further enacted,* That the said President or Vice-President and Council shall cause a register of the names of all persons so attainted of high treason, and of all real and personal estates and interests by this act vested in the state, or an authentic duplicate thereof, to be kept by the Secretary, and the same shall be A Register of the names and estates of persons attainted to be kept by the Secretary,



1778. open to the inspection of all persons, gratis, who shall demand the same, betwixt the hours of ten and twelve in the forenoon, on any lawful day; and in the said register shall be expressed the dates, when the entries of the said estates real or personal were made; and the said Secretary shall, from time to time, transmit an authentic copy of the said register to the Justices of the Supreme Court, or one of them, as soon as conveniently may be, and also within one month after the date of such entry, transmit another authentic copy thereof to the Sheriff of the county, within the limits of which any forfeited real estate is situated; and every such Sheriff shall insert the same in a book to be kept for that purpose, which shall be open to any person, *gratis*, demanding inspection upon any lawful day, between the hours of ten and twelve in the forenoon; and all the estates and interests entered in the said register by the Secretary, upon which no claim shall be entered within the time and in the manner herein after prescribed, shall be deemed to be vested in this state, by virtue of this act; and such of the said estates and interests, upon which claims shall be entered, shall in like manner be deemed to be vested in the state, subject only to such burden, diminution and eviction, as shall arise from the determination of the said claims.

and the Sheriff.

President, &c. after twelve months, shall sell the said estates;

make a deed under the state seal;

**XII.** *And be it further enacted,* That the said President or Vice-President and Council may and shall, within twelve months after the debts and claims upon the said estates shall be respectively adjudged, or in case there shall be no claim, sell, or cause the said estates to be sold, by auction, to the best and highest bidder, having previously caused public notice to be given, by advertisements in some newspaper within this state, and also in the county where the lands lie, thirty days, at least, of the times and places of sale, and of the estates and interests to be sold; and after the said sale, and the payment of the purchase money, the said President or Vice-President in Council shall under his hand and the state seal, give a deed or conveyance thereof unto the buyers, describing the lands and interests sold, and expressing the prices and time of sale, and shall also cause the possession thereof to be delivered to the said buyers, or their assigns; and if any purchaser shall make default in payment of the consideration money, at the time fixed for the payment thereof, he shall forfeit one fourth part of the same, to be recovered in the name of the state, to the use of the state, and a new sale of all such estates may and shall be made, in manner aforesaid, to any other person. All which monies so to be received shall be paid to the Treasurer, for the use of the state, and by him be accounted for as other public monies; subject, nevertheless, to the drafts of the President or Vice-President and Council, for payment of debts and claims affecting the same, and for salaries of inferior officers, and incident charges.

The buyers shall hold free of all incumbrances.

**XIII.** *And be it further enacted,* That the buyer or buyers of any lands, tenements, hereditaments, or chattels real, sold and conveyed by virtue of this act, shall be seized and possessed thereof free and clear from all incumbrances and claims whatsoever, of any person or persons whomsoever, the quit or chief rents only excepted, according to the contents of his, her or their conveyance, respectively.

1778.

All persons and bodies politic, claiming any interests in the forfeited estates, shall enter their claims before the Justices of the Supreme Court, in writing ;

**XIV.** *And be it further enacted,* That all bodies politic and corporate, and persons whatsoever (except all such forfeiting persons as aforesaid, and all persons having or claiming any thing in the premises, to the use of or in trust for any such forfeiting persons, or their or any of their heirs, executors or administrators) having any estate, right, title, interest, use, trust, possession, reversion, remainder, annuity, service, rent, debt, benefit, charge, or incumbrance whatsoever, in law or equity, upon any messuages, lands, tenements, rents, hereditaments, or any real or personal estate, or any other the premises, herein or hereby vested or to be vested in this state, by any settlement, conveyance, judgment, recognizance, extent, or other debt, charge or incumbrance, which was binding on the forfeiting person, and might have affected their estates, before the times whereon the same shall be vested in this state, by virtue of this act; and also all bodies politic and corporate, and persons whatsoever, pretending right or title to any estate, which shall be seized or taken by virtue of this act for the use of the state, and who shall pretend that none of the persons attainted, or to be attainted, in virtue of this act, of high treason, was possessed of or entitled unto such estate in his or their own right, or to his or their own use, or any other person in trust for them, on the said fourth day of July, one thousand seven hundred and seventy-six, or at any time since, or that they have right or title to such estate, shall within three months from the date of the entry that shall be made in the register kept by the Secretary, of any personal estate, and, in case of real estates, within six months of the entry of the register to be kept by the Sheriff of the county where such estate lies, of the estate or interest out of which such claims and demands ought to be made, enter their respective claims and demands before the Justices of the Supreme Court, in such manner as is herein after mentioned, or in default thereof every such claim and demand shall be null and void, to all intents and purposes whatsoever, and the estate charged therewith, shall from thence be discharged from the same; and all such claims and demands of infants may be made by their fathers or guardians, or any other persons in their behalf, and all claims of femmes covert by their husbands, or any other persons in their behalf; and all claims of madmen, idiots, or lunatics, by the persons under whose care they shall be at the time of entering such claim; and all such claims shall be made and tendered to the Justices of the said Supreme Court in term time, or to the Chief Justice in the vacation, written on parchment or paper, and signed by the parties making the same, or such other persons on their behalf as aforesaid, or signed by the attornies or factors of the party; and such signing shall be testified by two or more credible witnesses, who shall subscribe their names to attest the same; and every claimant shall therein particularly express what estate, right, title, interest, use, possession, reversion, remainder, annuity, service, rent, debt, benefit, charge, or incumbrance, he or she claims on any part of the premises, and under what grant, gift, settlement, conveyance, security, title or incumbrance; and if such claimant hath or claims any estate, right, title or interest, to any part of the premises, by virtue of any incumbrance or security, the dates and contents



1778. thereof, and the witnesses thereto; and if the same be recorded, when and where the same was entered, and whether such debt was and really is due, and remains wholly unpaid, and what part, and how much thereof, had been satisfied by money paid, perception of profits, or by any other ways and means whatsoever; and every such claim shall be transcribed by order of the said court, and entered in books to be provided and kept for that purpose; and the said Supreme Court shall proceed in a summary way, as well out of as in term time, to hear and determine all such claims; and every decree of said court in the premises shall be final and binding on all parties, in case thirty days, which is hereby allowed to them for reversing or amending such decrees, shall elapse, without any proceedings being had or commenced by either party for that purpose.

Who shall  
proceed in a  
summary  
way.

Attorney  
General to  
make de-  
fence.

XV. *And be it further enacted,* That the Attorney General, or some counsel by him authorized, shall provide for making proper answers and defences in behalf of the state, to all such claims as shall be offered as aforesaid, and for reversing, affirming, or amending the decrees that shall be passed upon such claims, as he shall see cause.

Supreme  
Court shall  
proceed sum-  
marily as to  
the claims.

XVI. *And be it further enacted,* That the Justices of the Supreme Court shall, in a summary way, proceed, upon the testimony of witnesses and examination of persons claiming, or otherwise interested, upon their oaths or affirmations, inspection and examination of deeds, writings, and records, or by all or any of the said ways, or otherwise, according to the circumstances of the case, as soon as conveniently may be, to hear and determine all claims which shall be entered within the times aforesaid; and the claimants shall (if required by the said court, or by the Attorney General) upon oath or affirmation, answer to the truth of his, her or their claim, and to such proper interrogatories as the court, or counsel for the state, shall think fit for the clearing thereof; and upon oath or affirmation produce before the said court all such deeds, writings and evidences, as are in his, her or their custody or power, any wise concerning the said claims, or the subject matter thereof.

Claims of  
debts out of  
the forfeited  
estates shall  
be paid by  
the Treasu-  
rers.

XVII. *And be it further enacted,* That where the claim shall contain demands of any sum or sums of money any wise affecting any of the said forfeited estates, the said President or Vice-President and Council shall issue out certificates to the claimants, for the sums which shall be determined to be due to them severally by the decrees of the said Supreme Court, with legal interest; and the same shall be paid without any deduction or fee, by the said Treasurer, out of such rents and profits as shall be paid into his hands from the respective estates, upon which the said claims are allowed; and where the claim shall contain a demand of any lands, tenements, rents, services, rents charge, hereditaments, or other real estate whatsoever, or any interest therein, and shall be decreed, as abovesaid, to be just and legal, in that case the Supreme Court shall order the Sheriff of the respective counties, where the same shall lie, to cause possession to be delivered to such claimant, his or her heirs, executors, administrators or successors, or to whom they or any of them shall appoint; and every such claimant, his or her heirs, executors, administrators, or successors, shall enjoy the same,

Claimants of  
any real es-  
tate to be put  
in possession  
by Sheriffs.

or such estate and interest therein respectively, as shall be adjudged and decreed as aforesaid. 1778.

**XVIII.** *And be it further enacted,* That all conveyances and assurances of any lands, tenements, rents, hereditaments or real estate whatsoever, made at any time after the fourth day of July, in the year of our Lord one thousand seven hundred and seventy-six, by any person who shall be attainted in virtue of this act, for the use of or in trust for himself, his wife, or any of his children (other than such as were made *bona fide* before and in consideration of marriage, or in performance of some agreement reduced into writing before or in consideration of marriage) and also all other assurances and conveyances made at any time since the fourth day of July, one thousand seven hundred and seventy-six, by any such person, are hereby declared to be, and shall for ever hereafter be deemed to be, fraudulent, and no claim shall hereafter be allowed for the same, excepting such assurances and conveyances as have been made since the time aforesaid, or shall be made in time coming, for just and valuable causes, the said causes being always otherwise manifested and proved than by the writings themselves.

All conveyances of traitors, since the 4th July 1776, to be void.

except made *bona fide*, and for valuable consideration.

**XIX.** *And be it further enacted,* That the tenants of the said attainted persons, who shall have paid their respective rents due to them after the fourth day of July, one thousand, seven hundred and seventy-six, and before the times of their respective attainders, without fraud or collusion, shall be discharged therefrom, on due proof of such actual payments respectively made.

Where their tenants have paid rents *bona fide*, it shall be valid.

**XX.** *Provided always, and it is further enacted,* That the said Justices of the Supreme Court may and shall order and appropriate such parts of the said forfeited estates for the support of such traitor's children, or wife and children, if any, as to them may appear sufficient, agreeable to an act of General Assembly, passed the eleventh day of February last, entitled *An Act declaring what shall be treason, and what other crimes and practices against the state, shall be misprision of treason.*

Supreme Court may order maintenance to traitor's wife or children. [Ante. chap. 729.]

Passed 6th March, 1778.—Recorded in Law Book vol. I. page 171. (i)

(i) Inquisition on a claim against the state, upon an eviction of lands, sold by the agents of forfeited estates, under the act in the text, confirmed, though no possession had been delivered by the Supreme Executive Council, and the purchaser had failed in an ejectment commenced against an adverse claimant by title paramount. *Coyne v. Rempublicam*, March, 1803. MSS. Rep. Sup. Court.

After the supplement of March 29th 1779, (post. chap. 821,) a claim which was not for the payment of money, or satisfaction out of the estate of the attainted traitor, could not properly be

brought before the Supreme Court to be heard in a summary way by the Judges. MSS. Rep. Sup. Court.

The curtesy estate of the husband, in the lands of the wife, is not forfeited to the Commonwealth for the life of the husband, by his attainder for treason committed in her life time, and after issue born; but the wife's estate is discharged from the curtesy. *Loosee of Pemberton v. Hicks*, 1 Binney, 1—S. C. 3 Dallas, 479, and 4 Dallas, 168.

See post. chap. 826, sect. 4, 5, with respect to judgments, attachments or executions against persons attainted by this act.



1778.

## CHAPTER DCCLXXX.

*An ACT for the calling in of the bills of credit issued by the legislative authority of Pennsylvania, under the sanction and authority of the crown of Great-Britain, and for other purposes therein mentioned.*

[Obsolete ;  
printed at  
large folio.  
vol. 1. pa.  
763, 8vo. vol.  
2. pa. 178.]

[**BILLS** issued under the authority of Great-Britain, before April 19th, 1775, declared not to be a legal tender, and the acts making them current, repealed, except such parts as relate to the convicting and punishing the counterfeiting or altering said bills, &c. and such parts as relate to the sinking the said bills of credit, by taxes, excise, or otherwise. The said bills to be paid to the State Treasurer, who shall exchange them by giving for them bills of credit emitted by congress or this commonwealth, or to the collectors of taxes, in payment of taxes; the collectors to exchange them, &c.—or into the Loan Office, in payment of mortgage monies due, provided the payments be made on or before the first day of June next (1778;) if not paid in before that time, to be irredeemable, or on or before the first of August, if in possession of persons in other States: or in possession of persons within the enemy's lines, who had taken the oath of allegiance, &c. on or before the first day of September: And the State Treasurer is directed to exchange the monies received into the Loan Office, and make report of the bills by him received, and together with a committee of Assembly, to be appointed from time to time by the General Assembly, count, burn and destroy the said bills.]

Passed March 25d, 1778.—Recorded in Law Book vol. I. page 184. (*k*)

(*k*) By chap. 741, sect. 10, it had been provided that all bills of credit, bearing date before the first of July, 1759, should not pass in payment of any debt or demand after the first of Oct'r, 1777—but only in payment of taxes.—See post. chap. 789, a supplement to this act, which declared the bills of credit, made current by the act of Sept'r 30th, 1775, to be within the meaning and operation of the original act; and bills of credit, emitted and made current by resolves of Congress, declared to be a legal tender, and the punishment pre-

scribed for counterfeiting, forging, altering, or uttering counterfeited, forged or altered Continental bills of credit, or Loan Office certificates, issued under certain acts, &c. This supplement was passed May 25th, 1778, is recorded in Law Book vol. I. page 198, and is printed in vol. I. folio, 769—8vo. vol. II. 183.

By the constitution of the *United States*, no State shall coin money, emit bills of credit, or make any thing but gold and silver coin, a tender in payment of debts. Art. 1, sect. 10.

# A C T S

OF THE

## General Assembly of Pennsylvania.

Passed at a Session which commenced August 4th, 1778,  
and ended September 10th, 1778.

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GEORGE BRYAN, VICE-PRESIDENT OF THE EXECUTIVE COUNCIL.  
JOHN BAYARD, SPEAKER OF THE GENERAL ASSEMBLY.

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1778.

### CHAPTER DCCXCII.

*An ACT for making valid the title of lands held under persons born out of the allegiance of the crown of Great-Britain, and who have died, not having been naturalized.*

WHEREAS the many advantages to be derived from the settling of a new and fertile country, under a government more free than some of those of the European states, induced many persons, not born in allegiance to the crown of Great-Britain, to settle in Pennsylvania, while it remained subject to that crown, and confiding in the justice and equity of the then government, and assurances given by the late William Penn, Esquire, laid out their money in lands, and improved the same with great industry, and have thereby acquired a just and equitable title thereto, and many of them died, not having been naturalized, whereby their titles in the law were defective, and the attempt of the Legislature under the said government to remedy the inconveniences and hardships arising thereby to the heirs, devisees and assigns of such persons, have, through the rigid policy of Great-Britain, been rendered ineffectual and abortive: For remedy whereof,

II. *Be it enacted, and it is hereby enacted,* That the heirs, devisees and assigns of persons, born out of the allegiance of the crown of Great-Britain, and who have removed to this or any of the adjoining states, for the purpose of settling, and who have died, not having been naturalized, shall hold their estates respectively, as if such persons, so having died, and not having been naturalized, had been born in allegiance to the said crown of Great-Britain, or

Estates held  
under aliens,  
not natural-  
ized, made  
valid.



1778. had been naturalized by law in due form made and enacted for that purpose, any law, usage or custom, to the contrary thereof in any wise notwithstanding.

Passed 31st August, 1778.—Recorded in Law Book vol. I. page 202.

## CHAPTER DCCXCIII.

[See the act for the acknowledging and recording of Deeds, and the notes thereto, ante, pa. 94, chap. 208.]

*An ACT to declare valid the acknowledgments of deeds, and the proofs of witnesses to the execution thereof, made and taken by and before any of the members of the former Council of Safety, or the Justices of the Peace appointed by the Convention of this state, or members of the Supreme Executive Council; and to declare valid the probate and registering of wills and granting letters of administration of the late Register General of the province of Pennsylvania, and his deputies in the several counties thereof, during a certain period of time.*

\* Ante. pa. 429, chap. 726.

WHEREAS, by the laws made under the former government of the province of Pennsylvania, and since continued and extended to the government of this commonwealth by an act of its Legislature, entitled *An Act to revive and put in force such and so much of the late laws of the province of Pennsylvania, as is judged necessary to be in force in this commonwealth, and to revive and establish the courts of justice, and for other purposes therein mentioned*,\* enacted the twenty-eighth day of January, in the year of our Lord one thousand seven hundred and seventy-seven, it was provided that all deeds and conveyances to be made in the said province, for transferring lands, tenements and hereditaments, within the same, should be acknowledged by one of the grantors, or proved by one or more of the subscribing witnesses, to such deed; and that the private examinations of femes covert, being parties to such deeds, should be taken by and before one of the Judges of the Supreme Court of the said province, or before one of the Justices of the Court of Common Pleas of the county where the lands conveyed lie.

II. And whereas, upon the declaration of independence, on the fourth day of July, in the year of our Lord one thousand seven hundred and seventy-six, the Supreme Court of Pennsylvania, and the Courts of Common Pleas of the several counties within this state, became dissolved, and all Judges, Justices, and officers thereof, as deriving jointly with the said courts their authority from the King of Great-Britain, stood severally disqualified from doing any act in their former office.

Justices of the Peace appointed by the Convention.

III. And whereas the Convention for the state of Pennsylvania, by an ordinance passed the third day of September, in the year of our Lord one thousand seven hundred and seventy-six, did nominate and appoint all the then members of a newly established Council of Safety, to wit, David Rittenhouse, Jonathan B. Smith, Owen Biddle, James Cannon, Timothy Matlack, Samuel Morris, the elder, Samuel Howell, Frederick Kuhl, Samuel Morris, the younger, Thomas Wharton, the younger, Henry Keppele, the younger, Joseph Blewer, Samuel Mifflin, George Gray, John Bull, Henry

Wynkoop, Benjamin Bartholomew, John Hubly, Michael Swope, William Lyon, Daniel Hunter, Peter Rhoads, David Espy, John Weitzel, and John Moore, Esquires, Justices of the Peace for this state at large, and a number of other persons to be Justices of the Peace for the several counties in this state, to wit, Benjamin Franklin, John Dickinson, George Bryan, James Young, James Biddle, John Morris, the younger, Joseph Parker, John Bayard, Sharp Delany, John Cadwallader, Joseph Cowperthwaite, Christopher Marshal, the elder, Francis Gurney, Robert Knox, Matthew Clarkson, William Coates, William Ball, Philip Boehm, Francis Casper Hassenclever, Thomas Cuthbert, the elder, Moses Bartram, Jacob Schreiner, Joseph Moulder, Jonathan Paschall, Benjamin Paschall, Benjamin Harbeson, Jacob Bright, Henry Hill, Samuel Ashmead, Frederick Antis, Samuel Erwin, Alexander Edwards, Seth Quee, Samuel Potts, Rowland Evans, Charles Bensell, and Peter Evans, Esquires, to be Justices of the Peace for the city and county of Philadelphia; Joseph Hart, Richard Walker, Joseph Kirkbride, John Wilkinson, John Kidd, Robert Patterson, John Clark, James Benezet, Samuel Smith, James M'Mullen, Theophilus Foulke, Joshua Anderson, George Wickart, and Thomas Long, for the county of Bucks; Alexander Johnston, William Clingan, Evan Evans, Richard Baker, John Sellers, Nicholas Fairlamb, John Jones, John Wilson, William Haslet, Israel Whelen, William Denny, Samuel Bond, and Robert Mendenhall, Esquires, for the county of Chester; Emanuel Carpenter, Edward Shippen, William Henry, Michael Hubley, William Bousman, Ludwig Lauman, James Bird, James Work, Timothy Green, John Thome, Moses Erwin, John Ferrie, Zaccheus Davis, David Jenkins, John Whitehill, James Clemson, William Brown, James Murray, Robert Thompson, Robert Barber, Thomas Whitesides, Michael Bright, and Christopher Wægman, Esquires, for the county of Lancaster; Robert M'Pherson, Martin Eichelberger, Samuel Edie, David M'Conaughy, Richard M'Alister, Henry Slagel, Matthew Dill, William Rankin, William Lees, William Bailey, William Scott, William Smith, William M'Casky, Josia Scott, Thomas Latta, William M'Clean, and John Mickle, the younger, Esquires, for the county of York; John Armstrong, John Byers, John Reynolds, Jonathan Hoge, Robert Miller, George Robeson, John Holmes, James Oliver, John Agnew, John Alison, James Maxwell, Samuel Lyon, William Brown, James Dunlap, John M'Clay, William Elliot, Matthew Henderson, and Frederick Watt, Esquires, for the county of Cumberland; James Read, Peter Spyker, Jacob Morgan, George Douglas, Mark Birk, Henry Christ, Baltzar Geer, John Patton, Thomas Dundas, Christopher Witman, Richard Tea, and Bastian Levan, Esquires, for the county of Berks; Robert Trail, Jacob Moory, Christopher Wagener, Henry Kookan, John Weitzel, Peter Traxler, senior, Nicholas Dupui, Evan Morgan, Robert Forgeman, and Henry Barnett, Esquires, for the county of Northampton; Bernard Dougherty, William Proctor, George Wood, Abraham Cable, Thomas Smith, Thomas Coulter, Henry Lloyd, John Piper, Samuel Davidson, William Latta, John Wilkins, William Todd, Benjamin Elliot, William Parker, Evan Shelby, David



1778. Jones, Henry Rhoads, William Johnston, William McLeavy, Gideon Ritchey, John Mellot, Edward Coomb, Hugh Davis, Matthew Patton, Robert Ramsey, Benjamin Bird, John Shaver, Samuel Thompson, William Philips, William Holiday, the younger, Charles Cessna, John Mitchel, and Richard Brown, Esquires for the county of Bedford; Samuel Hunter, James Potter, William McClay, Robert Moodie, John Lowden, Benjamin Weizer, John Fleming, Henry Antis, and John Simpson, Esquires, for the county of Northumberland; and Robert Hanna, William Lockary, Alexander McClean, Providence Mounts, Andrew McFarlin, James Pollock, James Caval, Samuel Sloane, Thomas Scott, Michael Hoofnagle, James Wilson, David Allen, Benjamin Davis, Philip Rogers, Joseph Caldwell, James Wilkins, William Elliott, George Latimore, and Samuel Burns, Esquires, to be Justices of the Peace for the county of Westmoreland; thereby ordaining and declaring that the said Justices, and every of them, should have full power and authority to take acknowledgments of deeds.

Members of  
Council Jus-  
tices *ex officio*  
by the con-  
stitution.

IV. And whereas, in and by the nineteenth section of the frame of government, it is declared, that every member of the Supreme Executive Council shall be a Justice of the Peace for the whole commonwealth, by virtue of his office, and several of the said members of the Council of Safety and Justices of the Peace of the respective counties, in consequence of their appointment by the Convention, and the members of the Supreme Executive Council, by virtue of the said declaration contained in the frame of government have taken acknowledgments of deeds, the affidavits on oath or affirmation of the subscribing witnesses to deeds, and the private examinations of femes covert, with respect to their free and unrestrained will and accord at the time of executing such deeds, and have accordingly certified such acknowledgments, affidavits, and private examinations, under their hands and seals.

V. And whereas the Supreme Court of this commonwealth, and the Courts of Common Pleas in the several counties thereof, having since by law been revived and re-established, and the Judges and Justices thereof commissioned by the President or Vice-President in Council, the form of acknowledging and proving the execution of deeds is again returned into its former channel.

VI. But forasmuch as the legality and validity of such acknowledgments of the parties, and proof of the witnesses to deeds, and of such private examinations of femes covert, as have been had and taken by and before any member of the Council of Safety, or any of the Justices appointed by the Convention, or any of the members of the Supreme Executive Council of this commonwealth, may hereafter be called in question: For preventing and remedying whereof,

Acknowledg-  
ments and  
probates of  
deeds made  
before the  
aforesaid  
Justices, &c.  
made valid.

VII. *Be it enacted, and it is hereby enacted,* That all the acknowledgments of the parties, and proofs of a subscribing witness or witnesses to a deed, and all the private examinations of femes covert, parties to a deed, concerning their free and unrestrained will and accord in executing the same, had and taken by and before any of the said members of the said Council of Safety (whilst that Council was subsisting) or any of the said Justices of the Peace appointed by the Convention, until Justices of the Court of Common Pleas were ap-

pointed, or a member of the Supreme Executive Council, at any time before the publication of this act, and on the foot or back of the deed certified, under the hand and seal of the person who has taken such acknowledgment, affidavit, or private examination, shall be good and valid in the law, and may be recorded as such, to the same effect as if such acknowledgment, affidavit, or private examination, had been taken by any of the Judges of the Supreme Court, or Justices of the Court of Common Pleas, of the county wherein the lands or other real estates conveyed lie. 1778.

VIII. *Provided always, and it is hereby further enacted*, That all deeds so acknowledged, proved, and certified, as aforesaid, if not already recorded, shall, within the space of nine months from the publication of this act, be recorded in the proper office of the county wherein the lands and tenements by such deeds conveyed do lie. Provided the deeds are recorded within nine months.

IX. And whereas the late office of Register-General for the probate of wills and granting letters of administration in the province of Pennsylvania, and the offices of all his deputies in the several counties within the same, were, upon the declaration of independence on the fourth day of July, one thousand seven hundred and seventy-six, vacated, and the Register-General and his deputies, according to the maxims of polity and government, disqualified from doing any act in their former offices: But forasmuch as the office and business of proving wills and administering on the estates of persons deceased is of such a nature, that any discontinuance in the exercise thereof may in many instances prove extremely injurious and detrimental to widows, orphans, absent relations, creditors, and other persons interested in the estate of a testator or intestate, so the late Register-General, and his deputies in the several counties of this state, have continued to exercise their respective offices, received the wills of the testators, and the probates thereof, registered the same, and granted letters testamentary and letters of administration, under the seal of the Register-General's office, until the publication of the act of this commonwealth, enacted in the first General Assembly thereof, on the fourteenth day of March, one thousand seven hundred and seventy-seven, entitled *An act for establishing in the city of Philadelphia, and in each county of this state, an office for the probate and registering of wills and granting letters of administration, and an office for the recording of deeds*: Therefore, in order to make valid and effectual in the law, the probate of such wills and granting letters of administration, made and done since the declaration of independence, to the time of publication of the said last mentioned act of assembly, by the late Register-General at Philadelphia, and by his deputies in the several counties of this state.

X. *Be it further enacted*, That all such last wills and testaments as have been received, proved and registered, and all letters testamentary and letters of administration granted in the Register-General's office at Philadelphia, and in the several counties of this state, since the declaration of independence of the fourth of July, one thousand seven hundred and seventy-six, to the fourteenth day of March, one thousand seven hundred and seventy-seven, when the said act for establishing the offices for wills and administrations was passed, or to the day when the several officers nominated and ap- Letters testamentary, &c. rendered valid till the new offices opened. [See ante, p. 443, chap. 131 and the notes thereunto subjoined and also chap. 737, ante, p. 443.]



1778. pointed in the city and several counties of this state, in pursuance of the said last recited act, opened or exercised their respective offices, shall be deemed as good and valid, to all intents and purposes, in the law, as wills proved and registered, and letters testamentary and of administration granted, by the Register-General, or his deputies in the several counties, before the declaration of independence, notwithstanding the incapacity of the said officers.

Passed 31st August, 1778.—Recorded in Law Book vol. I. page 202.

## CHAPTER DCCXCVII.

[Original  
act. ante. pa.  
168, chap.  
288.]

**A SUPPLEMENT** to the act, entitled *An act for the better preventing obstructions to the navigation of Chester creek, and other navigable creeks and rivers in this province.*

**WHEREAS**, in pursuance of an act of General Assembly of the province of Pennsylvania, entitled *An act for the better preventing obstructions to the navigation of Chester creek, and other navigable creeks and rivers in this province*, a draw-bridge, which in the year one thousand seven hundred had been first built over the said creek, was, in the year one thousand seven hundred and twenty-five, rebuilt, and ever since repaired and maintained, at the public charge of the said county of Chester, and the same bridge is at last decayed and ruined, and it is necessary, for the convenience of travellers on the high road, that a good safe bridge over the said creek should be always maintained and kept in repair, but the draw or engine to raise and lower the same is of no public utility, and yet attended with extraordinary expenses and inconveniences to the public: Therefore,

Commission-  
ers, &c. may  
build a new  
bridge, with-  
out a draw.

**II.** *Be it enacted, and it is hereby enacted*, That the Commissioners and Assessors, with the concurrence of the Magistrates of the county of Chester, shall, as soon as may be, cause a new bridge to be built at the place where the old bridge formerly stood, leaving at least twenty feet clear between the timber or stone work, and not less than eighteen feet in breadth, and eight feet headway at high water, for the easy passage for rafts, flats, shallops, and other crafts; and that the said bridge shall be made fast, and close continued from one side of the creek to the other, without any draw or opening for a mast, any thing in the said act of General Assembly to the contrary thereof notwithstanding.

Repeals

**III.** *And be it further enacted*, That so much of the said recited act, to which this is a supplement, as is herein altered or amended, is hereby declared to be repealed, and of no further force or effect.

Passed 3d September, 1778.—Recorded in Law Book vol. I. page 209.

# A C T S

OF THE

## General Assembly of Pennsylvania.

Passed at a Session which commenced February 1st, 1779,  
and ended April 5th, 1779.

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JOSEPH REED, PRESIDENT OF THE EXECUTIVE COUNCIL.  
JOHN BAYARD, SPEAKER OF THE GENERAL ASSEMBLY.

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1779.

### CHAPTER DCCCXXI.

A SUPPLEMENT to an act, entitled *An act for the attainder of divers traitors, if they render not themselves by a certain day, and for vesting their estates in this commonwealth; and for more effectually discovering the same; and for ascertaining and satisfying the lawful debts and claims thereupon.*

[See the original act, ante, chap. 773, pa. 449. and post. chap. 884, an error in the date of this act amended "March," substituted for "April."]

WHEREAS, in and by the act above mentioned, passed at Lancaster the sixth day of March, in the year of our Lord one thousand seven hundred and seventy-eight, it is enacted, that the President or Vice-President and Council may and shall, within twelve months after the claims and debts upon the estates therein described shall be respectively adjudged, or in case there shall be no debts, sell, or cause the said estates to be sold, by auction, to the best and highest bidder.

II. And whereas it is highly necessary and expedient to compel an exhibition of such debts or demands in a reasonable time, and prevent further waste and spoil of the said estates, and to make seasonable provision for the defence of the state, and the contingent charges thereof, that the said estates, both real and personal, should be sold, without further delay, and the monies thence arising carried into the public treasury, for the purposes aforesaid.

III. *Be it therefore enacted, and it is hereby enacted,* That the President or Vice-President and Council may and shall, with all convenient speed, sell, or cause to be sold, by public auction, to the best and highest bidder, all and every the estates of traitors duly forfeit-

The Council to sell the estates of traitors at public auction,



1779. ed to this commonwealth by virtue of the act, to which this is a supplement, or by virtue of any judgment of any court of law within this state, and cause the monies arising from such sales to be paid into the public treasury of this commonwealth, in manner hereinafter directed, any thing in the said act to the contrary notwithstanding (except that part of the estate of Joseph Galloway which is appropriated by an act, entitled *An act for vesting the house and lots therein described in trustees, for the use of the President of the Supreme Executive Council of the State for the time being.*)

Claims on the said estates to be made within six months.

IV. *And be it further enacted,* That whenever such intended sales shall be advertised, public notice shall also be given that the creditors of the said traitors, and all claimants upon the said respective estates, exhibit their several claims and demands to the Justices of the Supreme Court for payment or satisfaction, as is by the said act directed, within six months thereafter, if residents within this state, or within twelve months, if residents in any other of the United States, or be for ever barred from the recovery thereof.

Proviso as to minors, &c.

V. *Provided always nevertheless,* That if any such creditor or claimant shall, at the time of such notice given, be within the age of twenty-one years, feme covert, *non compos mentis*, imprisoned, or beyond sea, that then such person or persons shall be at liberty to exhibit their claims or demands as other persons now may, so as the same be done within six months, if residents within this state, or if residents within any other of the United States, within twelve months after such disability is removed.

If any attainder be reversed, it shall not affect the purchaser.

VI. *And be it further enacted,* That if any process or proceedings, by virtue of which any such attainder or judgment has been or may be made as aforesaid, shall hereafter be reversed or made void, for error, or for any other cause whatsoever, the same shall not affect or injure, or in any wise operate against, any *bona fide* purchaser under this act, but against the state only; but every such purchaser shall hold and possess the estate by him purchased, for ever exonerated and discharged of all former claims and demands whatsoever, in law or equity, (other than such as are herein after mentioned;) and in every such case, the plaintiff in error, or person injured by the attainder or judgment, by virtue of which any such estate shall be sold, shall apply to the legislature to be indemnified, out of the public treasury, to the amount of the purchase money of such estate.

The agents for forfeited estates shall pay in the monies within three months after the sale.

VII. *And be it further enacted,* That the agent or agents for disposing of forfeited estates in the city of Philadelphia, and each respective county, shall, within three months after the sale of any such estate, real and personal, in such county, pay the sum or sums of money arising therefrom to the treasurer of the state, after deducting all such lawful costs and charges as may accrue on the prosecution of each respective traitor, and on the sale of each respective estate; and the receipt of the said treasurer shall be a sufficient discharge to such agents, their executors and administrators, for the monies by them paid; and if any of the said agents shall neglect or refuse to pay the said monies, or any part thereof, as aforesaid, such agent or agents, so neglecting or refusing, shall forfeit and pay double such sum or sums, which he or they shall so neglect or refuse to pay as aforesaid, to be recovered by action of debt, case, or account

render, as the case may require, in the name and for the use of the commonwealth of Pennsylvania. 1779.

VIII. *And be it further enacted*, That nothing in this act contained shall extend, or be construed to extend, so as to debar or prevent any person or persons, or bodies politic or corporate, other than such as claim under any attainted or convicted traitor, from pursuing his, her or their action or actions, suit or suits, in any of the Courts of Record in this state, in the usual way, for the trial of his, her or their title to any of the lands, or to the possession of any of the lands, or other real estate, seized as the estate of any such traitor.

This act no bar to persons claiming title paramount.

IX. *Provided always nevertheless*, That if any person or persons, who shall purchase any real estate, seized and sold as the estate of any convicted or attainted traitor, shall be evicted, or shall be dispossessed of the same, by the judgment of any Court of Common Pleas, or of the Supreme Court of this state, given in any ejectment, which shall be brought by any person or persons having a lawful title thereunto at the time of the said sale, or afterwards, by remainder or reversion, against such purchaser, his heirs or assigns, his or their tenants, within twenty years after the same shall be sold, by virtue of this act, every person so evicted, his heirs or assigns, shall be paid the value of such estate at the time of such eviction, out of the treasury of this commonwealth.

Purchasers evicted on ejectment shall be repaid.

X. *And be it further enacted*, That where any claims or demands have heretofore been made, and where any claims or demands shall hereafter be made, on any of the estate of any traitor, in pursuance of the act to which this is a supplement, if the party or parties making such claim or demand, his, her or their agent or agents, attorney or attornies, shall request the same, the said Justices shall direct proper issues to be joined, and shall cause and direct a jury to be summoned for the trial of such issues, and such proceedings shall thereupon be had, as is usual and according to the course of law; and the said Court, on the finding of such jury, shall pronounce judgment, and award process, agreeable to the practice in other cases; provided such claim or demand amount to five pounds or more.

The Justices are to direct issues to be tried by juries, when requested.

XI. *And be it further enacted*, That the agent or agents in the city of Philadelphia, and in each of the respective counties, shall, over and above their necessary expenses, have and receive, as a compensation for his or their trouble in attending the management and disposal of each estate, at the rate of one *per centum*, if the money for which such estate shall be sold shall not exceed one thousand pounds; and at the rate of three fourths of one *per centum*, if it shall exceed one thousand pounds, and not exceed five thousand pounds; and at the rate of one half *per centum*, if the amount of said sales shall exceed five thousand pounds.

Commissions to the agents for forfeited estates.

XII. *And be it further enacted*, That the fees and allowances of the Prothonotary of the Supreme Court, auditors, jurors, and witnesses, for all services done by them respectively, in pursuance of the act to which this is a supplement, or of this act, shall be the same as the fees and allowances of the said Prothonotary, auditors, jurors and witnesses, for like services by them done and performed in the Supreme Court in other cases: And that the Judges of the

The fees to be as in other cases in the Supreme Court.



1779. Supreme Court shall be allowed their reasonable expenses, while they shall be employed in performing the *extra* services required to be performed by them by the act to which this is a supplement, or by this act, and their accounts for the same to be liquidated by the committee of accounts appointed by the General Assembly for the time being, and draughts for the same on the Treasurer of this state shall be signed by the Speaker of the said General Assembly.

Judges to be allowed reasonable expenses.

Judges salaries to be paid on their own order.

Repeal.

XIII. *And be it further enacted*, That the salaries allowed, or to be allowed to the Judges of the Supreme Court, shall from time to time be paid to them by the Treasurer of this state, on their own orders, by equal quarterly payments.

XIV. *And be it further enacted*, That so much of the said recited act, to which this is a supplement, as is herein altered or amended, is hereby declared to be repealed, and of no further force or effect.

[\* March ]

Passed 29th April,\* 1779.—Recorded in Law Book vol. I. page 245. (1)

(1) The Trustees of the University held to be entitled to compensation for lands or ground rents reserved to them, or bought by their agents, in case of eviction, under the 9th section of this act. *Trustees, &c. v. Rempublicum*, April, 1795. Sup. Court, MSS. Reports.

### CHAPTER DCCCXXIII.

*An ACT for incorporating the Scots Presbyterian church in the city of Philadelphia.*

Passed 31st March, 1779.—Private Act.—Recorded in Law Book vol. I. page 252.

### CHAPTER DCCCXXVI.

*An ACT declaring replevins, attachments, judgments and executions, in certain cases, to be erroneous and void.*

[See chap. 139, ante, page 44. and the notes there-to subjoined.]

WHEREAS divers writs of replevin have of late been granted and issued for goods and chattels taken in execution, and for fines and penalties legally incurred and due to this commonwealth, to the delay of public justice, and to the great vexation of the officers concerned in taking and levying the same:

Replevins issued for goods seized by any officer to be quashed

II. *Be it enacted and declared, and it is hereby enacted and declared*, That all writs of replevin granted or issued for any owner or owners of any goods or chattels, levied, seized, or taken in execution, or by distress, or otherwise, by any Sheriff, Naval Officer, Lieutenant or Sub-lieutenant of the city of Philadelphia or of any county, Constable, Collector of the public taxes, or other officer, acting in their several offices under the authority of the state, are irregular, erroneous and void; and that all such writs may and shall, at any time after the service, be quashed (upon motion) by the court to which they are returnable, the said court being ascertained of the truth of the fact, by affidavit, or otherwise.

and treble costs awarded.

III. *And be it further enacted*, That the court, besides quashing the said writs, may and shall award treble costs to the defendant or defendants in such writs; and also, according to their discretion, order an attachment against any Prothonotary or Clerk, who shall make out or grant any such writ, knowing the same to be for goods or chattels taken in execution, or seized as aforesaid.

IV. And whereas sundry judgments have been entered by virtue of warrants of attorney, and attachments and executions issued against persons attainted of treason, by virtue or in pursuance of the act of General Assembly, entitled *An Act for the attainder of divers traitors, if they render not themselves by a certain day, and for vesting their estates in this commonwealth; and for more effectually discovering the same; and for ascertaining and satisfying the lawful debts and claims thereupon*;\* notwithstanding a summary, speedy and ample remedy is, by the said act, provided for the *bona fide* creditors of such traitors, to the great waste of the estates, accumulation of suits, and unnecessary costs, and to the preventing a proper enquiry into the justice of the claims and demands of such suitors. 1779.

V. *Be it enacted*, That every judgment entered by virtue of any warrant of attorney, and attachment or execution issued against any person attainted of treason by the act of Assembly aforesaid, or after the date of the proclamation of the Supreme Executive Council of this state against such traitor, or which shall hereafter be so entered or issued, are hereby declared to be void, and of no effect; and that no claims or demands of any creditor, or other person whomsoever, against any such traitors, may or shall be heard, allowed or determined, in any other manner than according to the directions of the act of Assembly aforesaid, and the supplement thereto, passed this present session of Assembly.

\* Ante. chap. 773, pa. 449.

All judgments on warrants, attachments or executions, made void.

Passed 3d April, 1779.—Recorded in Law Book vol. I. page 266.



# A C T S

OF THE

## General Assembly of Pennsylvania.

Passed at a Session which commenced August 30th, 1779,  
and ended October 10th, 1779.

1779.

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JOSEPH REED, PRESIDENT OF THE EXECUTIVE COUNCIL.  
JOHN BAYARD, SPEAKER OF THE GENERAL ASSEMBLY.

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### CHAPTER DCCCXXXVII.

*An ACT for the better ascertaining the boundary line between the counties of Cumberland, Bedford, and Northumberland.*

[Cumberland county established, ante. pa. 201. chap. 380. Bedford county established, ante. pa. 330, chap. 629. Northumberland county established, ante. pa. 366, chap. 644.]

WHEREAS the act of General Assembly of the province of Pennsylvania, entitled *An act for explaining and better ascertaining the boundary lines of the county of Bedford*, passed the twenty-first day of March, one thousand seven hundred and seventy-two, and the act passed the same day, entitled *An Act for erecting a part of the counties of Lancaster, Cumberland, Berks, Northampton, and Bedford into a separate county*, contradictory to each other, and assign different and inconsistent boundaries to the said county of Bedford and the county of Northumberland; and part of the boundary of the said county of Northumberland is, by reason of the course of Little Juniata, near the head thereof, impassable; and that strip of land on the north-east side of Juniata, between Jack's Narrows and Standing Stone Mountain, being separated by large mountains from the rest of Cumberland county, makes it inconvenient for the people residing on the said north-east side of Juniata, at the place aforesaid, that the same should continue in the said county of Cumberland: For remedy whereof,

Boundaries  
and lines.

II. *Be it enacted, and it is hereby enacted*, That the lines following, viz. "Beginning where the line (dividing Pennsylvania and Maryland) crosses the North or Blue Mountain, that runs between the Great and Little Coves and that part of Cumberland county called Conecocheague; and thence along the summit of the said mountain, to the beginning of the Tuscarora Mountain, and run-

ning along the summit of the said Tuscarora Mountain to the Gap, 1779. near the head of the Path Valley; from thence a north line to the Juniata river; thence up the Juniata to Jack's Narrows; thence along the summit of the ridges and mountains which divide the waters falling into the said north-east side of the said Juniata, above Jack's Narrows aforesaid, from the waters which fall into the said river, below the said Narrows, to Tussey's Mountain, at the head of the Standing Stone Creek; thence along the summit of Tussey's Mountain, to the ridge dividing the waters falling into Bald Eagle Creek from the waters of Little Juniata; thence along the said last mentioned ridge, to the Chesnut Ridge; thence along the Chesnut Ridge, to the head of the southwest branch of Bald Eagle Creek; from thence a straight line to the head of Moshannon Creek; thence down Moshannon Creek, to the west branch of Susquehanna; thence up said west branch, to the purchase line run from Kittanning to the said west branch, to the line of Westmoreland county; thence along the south-east boundary of the said county of Westmoreland, as the same is described in the act erecting the said county of Westmoreland, to the line dividing Pennsylvania from Maryland aforesaid; and thence along the said line last mentioned, to the place of beginning;" shall be, and are hereby declared to be, the boundary lines of the said county of Bedford, any thing in the said recited acts, or of the act for erecting the said county of Bedford, to the contrary notwithstanding: *Provided*, That nothing herein contained shall be deemed or taken to disannul or make void the said recited acts, or any clause, article, matter or thing, therein contained, except what is hereby altered or supplied, but that the same articles, clauses, matters and things, and every of them, not hereby altered or supplied, shall be and remain in full force and virtue.

Passed 30th September, 1779.—Recorded in Law Book vol. I. page 287. (m)

(m) For the alteration of the boundaries described in this act, to the several acts mentioned therein, see the notes in.

## CHAPTER DCCCLII.

*An ACT for continuing an act, entitled An act for the more easy recovery of legacies.*

[Original act ante. p. 38<sup>1</sup>, chap. 654.

WHEREAS, an act of assembly, passed on the twenty-first day of March, which was in the year of our Lord one thousand seven hundred and seventy-two, entitled *An act for the more easy recovery of legacies*, has been found a good and wholesome law, and fit to be perpetuated; and the same being nearly expired by its own limitation:

II. *Be it therefore enacted, and it is hereby enacted*, That the said act, and every thing therein contained, save the clause limiting the continuance thereof, is hereby made perpetual.

Act made perpetual.

Passed 9th October, 1779.—Recorded in Law Book vol. I. page 305.



# A C T S

OF THE

## General Assembly of Pennsylvania.

Passed at a Session which commenced October 25th, 1779,  
and ended November 27th, 1779.

1779.

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JOSEPH REED, PRESIDENT OF THE EXECUTIVE COUNCIL.  
JOHN BAYARD, SPEAKER OF THE GENERAL ASSEMBLY.

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### CHAPTER DCCCLX.

*An ACT to confirm the estates and interests of the college, academy and charitable school of the city of Philadelphia, and to amend and alter the charters thereof, conformably to the revolution, and to the constitution and government of this commonwealth, and to erect the same into an university.*

WHEREAS the education of youth has ever been found to be of the most essential consequence, as well to the good government of states, and the peace and welfare of society, as to the profit and ornament of individuals, insomuch, that from the experience of all ages, it appears that seminaries of learning, when properly conducted, have been public blessings to mankind, and that on the contrary, when in the hands of dangerous and disaffected men, they have troubled the peace of society, shaken the government, and often caused tumult, sedition and bloodshed.

II. And whereas the college, academy and charitable school of the city of Philadelphia, were at first founded on a plan of free and unlimited catholicism ; but it appears that the trustees thereof, by a vote or bye-law of their board, bearing date the fourteenth day of June, in the year of our Lord one thousand seven hundred and sixty-four, have departed from the plan of the original founders, and narrowed the foundation of the said institution :

Former  
charters and  
bye-laws,  
declared null  
and void.

[III. *Be it therefore enacted, and it is hereby enacted,* That the charter of the said seminary, granted by the late Proprietaries of Pennsylvania, bearing date the thirtieth day of July, in the year of our Lord one thousand seven hundred and fifty-three, whereby certain

persons were incorporated, by the name, style and title of **1779.**  
 The Trustees of the Academy and Charitable School in the  
 province of Pennsylvania, and the additional charter granted by the  
 same Proprietaries, bearing date on the fourteenth day of May, in  
 the year of our Lord one thousand seven hundred and fifty-five, by  
 which the trustees of the same academy and charitable school were  
 again incorporated, by the name, style and title of The Trustees of  
 the College, Academy and Charitable School of the city of Philadel-  
 phia, in the province of Pennsylvania, together with all and singu-  
 lar the rights, powers, privileges, emoluments and advantages, and  
 also all the estates, claims and demands, to the same corporation be-  
 longing, discharged from the afore recited vote or bye-law of the  
 said trustees, confining and narrowing the true and original plan of  
 the said institution, (which vote or bye-law, and all others, contrary  
 to the true design and spirit of the said charter, are hereby declared  
 to be void,) be, and they are in and by this act, ratified and confirmed  
 to, and for the use and benefit of, the same seminary for ever.]

IV. And to the end that the trustees herein after named and ap-  
 pointed may be the better enabled to effectuate the pious and praise-  
 worthy designs of the founders, benefactors and contributors of the  
 said college, academy and charitable school of Philadelphia :

V. *Be it further enacted*, That it shall and may be lawful for the  
 Supreme Executive Council of this state to reserve such and so  
 many of the confiscated estates, yet unsold and unappropriated, as  
 to them shall appear necessary, in order to create a certain fund for  
 the maintenance of the Provost, Vice-Provost, Masters and Assis-  
 tants, and to uphold and preserve the charitable school of the said  
 university. Power to the Executive Council to reserve confiscated estates, not sold.

VI. *Provided always*, That the yearly income of such estates, so  
 reserved and appropriated to the use of the said university, do not  
 exceed the sum of fifteen hundred pounds, computing wheat at the  
 rate of ten shillings per bushel. Proviso.

VII. *And provided also*, That such reservation be from time to  
 time laid before the General Assembly of this state, for their appro-  
 bation and confirmation. Proviso.

VIII. [*Provided always, and be it enacted*, That the ratifying and  
 confirming the said charter, or any thing herein contained, shall not  
 extend or be construed to extend to the confirming or establishing any  
 of the said trustees, in the said charter named, or deriving by any elec-  
 tion, or pretended election, or appointment by, from or under them, or  
 any of them, nor to any Provost, Vice-Provost, Professor, or other mi-  
 nister or officer of the said seminary, other than such as are hereby, or  
 may hereafter be appointed (the said board and the faculty being here-  
 by dissolved and vacated) nor shall the same extend to such parts of  
 the charter, as in and by this act are or may be abrogated, annulled,  
 altered or supplied.] Proviso.

[IX. *And be it further enacted*, That from and after the passing  
 of this act, the superintendence and trust, together with all and sin-  
 gular the powers, authorities and estates, real, personal and mixed,  
 of the said college, academy and charitable school, shall pass to, de-  
 volve upon, and be vested in, the President of the Supreme Execu-  
 tive Council of this commonwealth, the Vice-President of the same  
Names of the Trustees. [Supplied by the act of Union, post. chap. 1587.]



1779. Council, the Speaker of the General Assembly, the Chief Justice of the Supreme Court of Judicature, the Judge of Admiralty, and the Attorney-General, for the time being, in virtue of their several offices, and the senior Minister in standing of the Episcopal churches and congregations, and the senior Minister in standing of the Presbyterian churches, and the senior Minister in standing of the Baptist churches, and the senior Minister in standing of the Lutheran churches, and the senior Minister in standing in the German Calvinist churches, and the senior Minister in standing in the Roman churches, whose churches or houses of public worship are or shall be in the city of Philadelphia, or within two miles of the old Courthouse in High-street, in the said city, together with the honourable Benjamin Franklin, Doctor of Laws, Minister Plenipotentiary from the United States of America to his Most Christian Majesty, the honourable William Shippen, Frederick Muhlenburgh, and James Searle, Esquires, Delegates in the Congress of the said United States for Pennsylvania, the honourable William Augustus Atlee, Esquire, and the honourable John Evans, Esquire, Justices of the Supreme Court of Judicature, Timothy Matlack, Esquire, Secretary of the Supreme Executive Council of this state, David Rittenhouse, Esquire, Treasurer of this state, Jonathan Bayard Smith, Esquire, Samuel Morris, senior, Esquire, George Bryan, Esquire, Thomas Bond, Doctor of Physic, and James Hutchinson, Doctor of Physic, which said civil officers, ministers of the gospel, and others herein mentioned and appointed, for and during their continuance in the said office and stations respectively, their abode in this state, and lawful capacity to act, and their successors for ever hereafter, shall be, remain and continue the trustees aforesaid, by the name, style and title of the Trustees of the University of the State of Pennsylvania, and shall from henceforth have, hold, use, exercise and enjoy all the powers, authorities and advantages of the estates, rights, claims and demands of the trustees appointed by, or in pursuance of, the charters of the said corporation, or either of them, instead of the said trustees appointed by or deriving under the said charter, or pretending so to do, in trust, nevertheless, for the proper use of the said university for ever.]

College  
erected into  
an Univer-  
sity.

Proviso.

X. *Provided always*, That if any trustee of the said university shall take any charge or office under the said trustees, other than that of treasurer, his place shall thereby be vacated, and in the case of a minister of the gospel taking such charge or office, or neglecting to qualify according to the directions of this act, within one month after personal notice given of his coming to such trust, the next minister in seniority of the same denomination, shall succeed him, such seniority to be accounted from the time of settlement of such person as minister of a congregation in or near the said city.

Proviso.

XI. *Provided also*, That in case the choice of a new trustee, in the room and stead of any of the persons last named, or their successors, shall be disallowed by the House of Assembly within six months, the trustees shall be obliged to make choice of some other person.

Former oath  
superseded.

[XII. *And be it further enacted*, That instead of the oath or affirmation and declaration, which were enjoined and required to be taken and made by the second or additional charter, herein before re-



ferred to, of the said Corporation, by the Trustees, Provost, Vice-  
Provost and Professors of the said college, academy and charitable  
school, which oath or affirmation and declaration, being totally in-  
consistent with the independence and constitution of this common-  
wealth, are hereby abrogated and repealed, the said Trustees herein  
before appointed, and their successors, and the Provost, Vice-Pro-  
vost and Professors, and every of them, hereafter to be appointed  
in such manner and form as herein is directed and required, before  
he or they enter upon the duties of their trust or office, shall, before  
two Justices of the Peace of the city of Philadelphia, or of some  
county of this state, take and subscribe the oath or affirmation, pre-  
scribed by the fortieth section of the constitution of this common-  
wealth to be taken by the officers of this state, and also the oath or  
affirmation of allegiance directed to be taken by the same officers, in  
and by the seventh and eighth sections of an act of Assembly, made  
and passed the fifth day of December, in the year of our Lord one  
thousand seven hundred and seventy-eight, entitled *A further sup-  
plement to the act, entitled An Act for the further security of the go-  
vernment*,\* and shall also take an oath or affirmation for the faithful  
discharge of their trust or office aforesaid.]

New one  
appointed.

[\* Chap 811,  
but all the  
test laws are  
abolished.]

[XIII. *And be it further enacted*, That all and every the clause  
and clauses in the said charters, wherein and whereby the Trustees  
of the said college, academy and charitable school, are directed  
and enjoined to make their rules, ordinances and statutes not repug-  
nant to the laws in force in the kingdom of Great-Britain, nor to the  
laws in force in the province of Pennsylvania, be, and they are  
hereby, annulled, repealed and made void; and the Trustees herein  
and hereby appointed are required and enjoined to review the rules,  
ordinances and statutes heretofore made by the former Trustees of  
the said seminary, which, so far as they are repugnant to the constitu-  
tion and laws of the state, are hereby repealed, and to frame the  
same if necessary, and all rules, ordinances and statutes, hereafter  
to be made, consistent with the constitution and laws of this com-  
monwealth.]

Former  
powers to  
make rules,  
with certain  
exceptions,  
declared null  
and void.

XIV. *And be it further enacted*, That the business of the said  
Corporation shall and may be transacted, performed and determined  
by the major vote of a meeting of seven at least of the Trustees  
appointed by this act, and their successors, duly notified and called,  
other than the choice of new Trustees, the nominating and consti-  
tuting, or the dismissing of the future Provost, Vice-Provost or  
Professors, or any of them; or the alienation or leasing of real es-  
tates for more than seven years, or any extraordinary and new ex-  
penditure of the income, or other personal estate of the said Cor-  
poration, or the altering any salary, or the granting degrees to the  
scholars of the said university, or to other persons, or to the making  
any ordinance, statute or bye-law; which several enumerated acts  
and doings may be transacted and performed by a majority of at least  
eleven of the said Trustees, duly notified and convened as aforesaid,  
and not otherwise.

Matters to  
be determin-  
ed by a ma-  
jority of  
seven, ex-  
cept, &c.

XV. *And be it further enacted*, That the clause in the first char-  
ter of the said Corporation, whereby the Trustees thereof were  
limited to be inhabitants of Pennsylvania, residing within five miles

Former limi-  
tation decla-  
red null and  
void.



1779. of the academy and school aforesaid, although licence was given in the said charter to set up the same at any place within the said province, which the said Trustees should judge to be most convenient, so far as the same clause limits the appointment of Trustees to persons residing within five miles of the said academy and school be, and the same is hereby, annulled, repealed and made void.

Power to the Trustees to sue and recover, &c.

Penalty on former Trustees, &c. neglecting or refusing to deliver up books, records, &c.

[\* Misnomer corrected, post. chap. 884.]

[XVI. *And be it further enacted*, That the Trustees herein before appointed, and their successors, shall and may ask, demand, sue for, recover and receive, all evidences, mortgages, specialties, deeds and instruments, and all papers, books of account and record, and the library, philosophical apparatus, and seals of the said Corporation; and all debts, dues and demands, to the same owing, belonging accruing, or appertaining. And in case any person or persons having the custody of the said library, apparatus, mortgages, specialties, deeds or instruments, or other papers, books or records of the said Corporation, or having possession of the real estate of the said Corporation, or any part thereof, shall refuse to deliver up the same, when demanded, it shall and may be lawful for the Trustees of the said college\* to summon any person, so refusing, before any two Justices of the Peace of the city or the county where the said real estate lies, or the detainer of any of the records, or other articles aforesaid, resides, who are hereby authorized and empowered to enquire into the said complaint, in a summary way, and give judgment therein, as to them shall seem meet, according to the merits and justice of the case; and if such judgment be given against the detainer of any of the said deeds, specialties, mortgages, or other articles before enumerated, and such detainer shall still refuse to deliver the same, it shall and may be lawful for the said Justices, and they are hereby required, to commit such refuser to prison, there to remain, without bail or main-prize, until the said judgment be complied with. And in the case of real estate, the said Justices shall carry such judgment into execution, by issuing a writ of possession to the Sheriff of the county, in the same manner as they are authorised to do by an act of Assembly, entitled *An Act for the sale of goods distrained for rent, and to secure such goods to the person distraining the same, for the better security of rents, and for other purposes therein mentioned*, in case of tenants holding over their terms: *Provided always*, That if either of the said parties shall demand a jury to be summoned, to try the said matter in dispute, the said Justices shall cause a jury forthwith to come before them thereupon, in the same manner as juries are had in the case of tenants holding over their terms as aforesaid; and the said Justices shall give judgment pursuant to the verdict of such jury, and proceed to the execution thereof, as is herein and hereby directed.

Style of the Trustees.

Power to make a common seal, rules, &c.

XVII. *And be it further enacted*, That the civil officers, ministers of the gospel, and other persons, by this act constituted and appointed Trustees of the said University, and their successors, duly chosen, nominated and appointed, be one community, body politic and corporate, to have perpetual succession and continuance for ever, by the name, style and title as aforesaid, and that by the said name they shall be capable and able in law to sue and be sued, have and make a common seal, and the same at their pleasure to

break and alter, to make rules and statutes, and to do every thing necessary and needful for the good government and perfect establishment of the said University; and the Provost, Vice-Provost and Professors, hereafter to be appointed and constituted by the Trustees aforesaid, shall be named, styled and entitled, The Provost, Vice-Provost and Professors of the same University; and the name, style and title of the body or faculty, composed of the said Provost, Vice-Provost and Professors, shall be, The Provost, Vice-Provost and Professors of the University of the state of Pennsylvania.

1779.  
and to amend  
and alter  
them.

XVIII. *And be it further enacted*, That the said Trustees shall at all times, when required, submit the books, accounts and œconomy of the said Corporation to the free examination of visitors, to be appointed from time to time by the Representatives of the free-men of this commonwealth, in General Assembly met.

Trustees  
shall submit  
their books;  
accounts,  
&c. to the  
inspection of  
the Assem-  
bly.  
[See chap.  
1587.]  
Time of  
first meet-  
ing.  
[Obsole.]

[XIX. *And be it further enacted*, That the Trustees appointed by this act, or a majority of them, shall meet in the hall of the University aforesaid, in the forenoon, on the first Wednesday in December next, and after being duly qualified as this act prescribes, proceed to the execution of their trust.]

Passed 27th November 1779.—Recorded in Law Book vol. I. page 319. (n)

(n) By chap. 884, post. the misnomer in the 16th sect. styling the institution "College" instead of "University" was corrected. By an act of the 22d September, 1785, (chap. 1184) the provision of the 5th section of the act in the text was effectuated, by an appropriation of certain confiscated estates to the benefit of the University. The same act declared that if a trustee (not being such *ex officio*) absented himself for six months, his seat should be vacated; and directed the continuance of a German professorship in the institution.

By an act of the 6th of March, 1789, (chap. 1382,) so much of the act in the text, as affected, in any way, the ancient corporation of "The Trustees of the College, Academy, and Charitable School of Philadelphia, in the province of Pennsylvania," was annulled; and the rights and property of that corporation were restored. But by an act of the 30th September, 1791, (chap. 1587,) the two institutions were again united, by agreement and request of their respective trustees, on the terms mentioned in the act. (Note to former edition.)

## CHAPTER DCCCLXIII.

*An ACT for vesting the estates of the late proprietaries of Pennsylvania in this commonwealth.*

WHEREAS the charter from Charles the second, heretofore King of England, to William Penn, under which the late province, now state, of Pennsylvania, was first began to be settled, was granted and held for the great ends of enlarging the bounds of human society, and the cultivation and promotion of religion and learning; and the rights of property and powers of government, thereby vested in the said William Penn and his heirs, were stipulated to be used and enjoyed, as well for the benefit of the settlers, as for his own particular emolument, agreeable to the terms of the said charter, and of certain conditions and concessions entered into between them.

II. And whereas the claims heretofore made by the late Proprietaries to the whole of the soil contained within the bounds of the



1779. said charter, and in consequence thereof the reservation of quit-rents and purchase money upon all the grants of lands within the said limits, cannot longer consist with the safety, liberty and happiness of the good people of this commonwealth, who at the expense of much blood and treasure, have bravely rescued themselves, and their possessions from the tyranny of Great-Britain, and are now defending themselves from the inroads of the savages.

III. And whereas the safety and happiness of the people is the fundamental law of society, and it has been the practice and usage of states most celebrated for freedom and wisdom to control and abolish all claims of power and interest inconsistent with their safety and welfare ; and it being the right and duty of the representatives of the people to assume the direction and management of such interest and property as belongs to the community, or was designed for their advantage.

IV. And whereas it has become necessary that speedy and effectual measures should be taken in the premises, on account of the great expenses of the war, and the rapid progress of the neighbouring states in locating and settling the lands heretofore uncultivated, by which multitudes of inhabitants are daily emigrating from this state :

Soil vested  
in the com-  
monwealth,

and all other  
heredita-  
ments,

V. *Be it therefore enacted, and it is hereby enacted,* That all and every the estate, right, title, interest, property, claim and demand of the heirs and devisees, grantees, or other claiming as Proprietaries of Pennsylvania, whereof they or either of them stood seized, or to which they or any of them were entitled, or which to them were deemed to belong, on the fourth day of July, in the year of our Lord one thousand seven hundred and seventy-six, of, in or to the soil and land contained within the limits of the said late province, now state of Pennsylvania, or any part thereof, together with the royalties, franchises, lordships, and all other the hereditaments and premises comprised, mentioned and granted in the same charter, or letters patent of the said King Charles the second (except as herein after is excepted) shall be, and they are hereby vested in the commonwealth of Pennsylvania, for the use and benefit of the citizens thereof ; freed and discharged, and absolutely acquitted, exempted and indemnified, of, from and against all estates, uses, trusts, entails, reversions, remainders, limitations, charges, incumbrances, titles, claims and demands whatsoever, from, by or under the said charter, or letters patent, or otherwise, as fully, clearly, and entirely, as if the said charter, or letters patent, and the estates, interests, hereditaments and premises, therein comprised, mentioned and granted, and all other the estate, right and title of the said Proprietaries, of, in and to the same premises, were herein transcribed and repealed.

and at the  
disposal of  
the Legisla-  
ture,

VI. *And be it further enacted,* That the said soil and lands, hereditaments and premises, and every part and parcel thereof (except as is herein excepted) from and after the date hereof, shall be subject to such disposal, alienation, conveyance, division and appropriation, as to this or any future legislature of this commonwealth, shall from time to time seem meet and expedient, in pursuance of such law or laws as shall for that purpose hereafter be made and provided.

**VII.** *Provided always, and be it enacted,* That all and every the rights, titles, estates, claims and demands, which were granted by or derived from the said Proprietaries, their officers or others by them duly commissioned, authorized and appointed, or otherwise, or to which any person or persons, other than the said Proprietaries, were or are entitled, either in law or equity, by virtue of any deed, patent, warrant or survey, of, in or to any part or portion of the lands comprised and contained within the limits of this state, or by virtue of any location filed in the Land-Office, at any time or times before the said fourth day of July, in the year of our Lord one thousand seven hundred and seventy-six, shall be, and they are hereby confirmed, ratified and established for ever, according to such estate or estates, rights or interests, and under such limitations and uses, as in and by the several and respective grants and conveyances thereof are directed and appointed. 1779.  
Proviso.

**VIII.** *Provided also, and be it enacted,* That all and every the private estates, lands and hereditaments, of any of the said Proprietaries, whereof they are now possessed, or to which they are now entitled, in their private several right or capacity, by devise, purchase or descent; and likewise all the lands called and known by the name of the Proprietary Tenths or Manors, which were duly surveyed, and returned into the Land-Office, on or before the fourth day of July, in the year of our Lord one thousand seven hundred and seventy-six, together with the quit or other rents, and arrearages of rents, reserved out of the said proprietary tenths or manors, or any part or parts thereof, which have been sold, be confirmed, ratified and established for ever, according to such estate or estates therein, and under such limitations, uses, and trusts, as in and by the several and respective reservations, grants and conveyances thereof, are directed and appointed. Proviso.

**IX.** *And be it further enacted,* That all and every the quit rents which at any time or times heretofore have been reserved in and by any warrant, patent or other conveyance of lands or other hereditaments, from, by or under the said Proprietaries, their officers, or others by them commissioned and appointed, and all and every the dues and arrearages of quit rents and arrearages of purchase monies for lands not within the tenths or manors aforesaid, or which at any time or times heretofore have been deemed or taken to be due and in arrear, other than the quit or other rents reserved within the proprietary tenths or manors before mentioned, shall from henceforth cease and determine, and the same lands and other hereditaments shall be held free and discharged therefrom, and from the payment thereof for ever. Quit rents  
abolished,  
except, &c.

**X.** *Provided always, and be it further enacted,* That in order to preserve equality among the purchasers of land under the said late Proprietaries, the said arrears of purchase money, other than for lands within the said tenths and manors, shall be accounted to be due and payable to the commonwealth. Proviso.

**XI.** *And be it further enacted,* That all and every law or laws, act or acts of Assembly, heretofore made and enacted by the legislature of the province of Pennsylvania, or such parts and clauses thereof, by which any right, title or claim, power or authority, is or are Repeal of  
former pow-  
ers to the  
Proprieta-  
ries, &c.



1779. given or granted, ratified or established, in the said Proprietaries, or any of them, their or any of their officers or servants, of, in or to any of the estates, lands or other hereditaments, herein and hereby vested and confirmed, or meant to be hereby vested and confirmed, in this commonwealth, for the use and benefit of the citizens thereof, or of, in or to the quit rents and purchase money, and arrearages thereof, or of, in or to any portion thereof herein and hereby released, discharged and abolished, or meant so to be, be, and are hereby, annulled, revoked and repealed.

XII. And whereas the freemen of this commonwealth, being desirous to manifest not only a regard to their own safety and happiness, but their liberality also, and remembrance of the enterprising spirit which distinguished the founder of Pennsylvania, and mindful of the expectations and dependence of his descendants on the propriety thereof, and also that sundry marriage settlements and testamentary dispositions have been made thereupon, which will be wholly defeated, and the parties exposed to great disappointment and loss, if no provision be made therein.

Donation to  
the late  
Proprietaries.

XIII. *Be it therefore enacted*, That the sum of one hundred and thirty thousand pounds, sterling money of Great-Britain, be paid out of the treasury of this state, to the devisees and legatees of Thomas Penn and Richard Penn, late Proprietaries of Pennsylvania respectively, and to the widow and relict of the said Thomas Penn, in such proportions as shall hereafter by the legislature be deemed equitable and just, upon a full investigation of their respective claims.

When pay-  
ment there-  
of is to com-  
mence.


XIV. *Provided always*, That no part of the said sum of one hundred and thirty thousand pounds sterling shall be paid within less than one year after the termination of the present war with Great-Britain; and that no more than twenty thousand pounds sterling, nor less than fifteen thousand pounds sterling thereof, shall be paid or payable in any one year, until the whole sum be fully paid and discharged; and that the first annual payment thereof be made at the expiration of one year after the termination of the said war. (o)

XV. *And whereas*, divers persons, who have acted under the said late Proprietaries, or any of them, as Secretaries of the Land-Office, receiver of purchase money, rents or other income, Surveyor-General, Surveyors of land, or otherwise, or being the heirs or representatives of such persons, are possessed of divers books, surveys, returns of survey, certificates, orders or other documents, instruments, records or writings, or seals to the said Proprietary belonging or appertaining, or which have been usually lodged and kept in the several and respective offices of Secretary of the Land-Office, Receiver-General and Surveyor-General, may neglect or refuse to deliver up the same, undiminished, to the Supreme Executive Council of this state, as is proper and necessary upon the passing of this act :

Officers to  
deliver up  
books, pa-  
pers, &c. on

XVI. *Be it therefore enacted*, That if any person or persons whatsoever, who now is, or are, or hereafter shall be, possessed of any of the said books, surveys, returns of survey, certificates, orders or

(o) The various acts providing for the payment of this legislative grant, which is now completely discharged, with interest, are chap. 1119, 1126, 1273, 1551, 1716; [which acts are of course obsolete.] (Note to former edition.)

other documents, instruments, records, writings, or seals, and shall, after demand thereof in writing made by the President or Vice-President of the Supreme Executive Council of this state, for one month after such demand, refuse or neglect to deliver up the same to the person or persons empowered by the said President or Vice-President to receive the same, such person or persons, so refusing, shall forfeit and pay to the use of the commonwealth any sum, not exceeding five hundred thousand pounds, upon being convicted by indictment in any Court of Oyer and Terminer; and moreover, if such person or persons, after such conviction, persist in such refusal, such person or persons shall be sentenced to imprisonment, until he or they deliver the books, surveys, or other herein before mentioned articles, by such person or persons withheld as aforesaid. 1779.  demand on penalty, &c.

Passed 27th November, 1779.—Recorded in Law Book vol. I. page 324.



# A C T S

OF THE

## General Assembly of Pennsylvania.

Passed at a Session which commenced January 19th, 1780,  
and ended March 25th, 1780.

1780.

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JOSEPH REED, PRESIDENT OF THE EXECUTIVE COUNCIL.  
JOHN BAYARD, SPEAKER OF THE GENERAL ASSEMBLY.

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### CHAPTER DCCCLXVII.

*An ACT for vesting the State-house in the city of Philadelphia, the house in High-street in the said city, appropriated to the use of the President of the Supreme Executive Council for the time being; the Province-Island, and Great Mud-Island; the military barracks in the Northern-Liberties of the city of Philadelphia, and in the Northern part of the borough of Lancaster; the public store-house and the magazine for securing gun powder in the said borough; the several court-houses, gaols, prisons and work-houses of the several counties of this state; and all other real estate belonging to the public, in the commonwealth.*

[See chap.  
477, ante. pa.  
242, post.  
chap. 1154.  
1282.]

WHEREAS, on account of the difficulty of securing in a proper manner the real estate of the public in the late province, now state, of Pennsylvania, the same was vested in feoffees or trustees, or in bodies politic and corporate: And whereas the persons enfeoffed of the same may have in some cases all died; and it may be difficult to ascertain the person to whom the estate so vested hath descended, if suits in the law should be necessary for the conservation of the said real estate: For remedy whereof, and to place the same on a uniform, convenient and permanent footing:

Enumera-  
tion of what  
public build-  
ings shall be  
invested in  
the common-  
wealth.

II. *Be it enacted, and it is hereby enacted, That the State-house in the city of Philadelphia, together with the adjoining lot and piece of ground thereunto appertaining, bounded by Chesnut-street on the north, Fifth-street from the river Delaware on the east, Sixth-street from the said river on the west, and Walnut-street on the south, as the same are now vested in Samuel Rhoads and Edward Penington;*

and the house and lots situate on High-street, Minor-street, and Sixth-street in the said city, late the estate of Joseph Galloway, Esquire, appropriated and appointed for the use of the President of the Supreme Executive Council, by an act, entitled *An Act for vesting the house and lots therein described in Trustees, for the use of the President of the Supreme Executive Council of this state for the time being*,\* Chap. 318. passed on the eighteenth day of March last; and the island called the Province-Island, situate on the south side of the mouth of the river Schuylkill, adjoining the river Delaware, within the township of Kingsessing, and county of Philadelphia, and heretofore known by the name of Fisher's-Island, containing about three hundred and forty-two acres, as the same was held in trust by Joseph Harvey, Thomas Tatnel, Joseph Trotter, James Morris and Oswald Peel, and afterwards conveyed by the said Joseph Trotter, the survivor of the said Trustees, to Joseph Fox, Samuel Rhoads, Joseph Galloway, John Baynton, Edward Penington, Charles Humphreys and Michael Hillegas;† and the island in the river Delaware, named Great Mud-Island or Deep Water-Island, situate southward of the Province-Island, as the same was held by Joseph Galloway, and by him sold for a fortress to the public, who paid him the full consideration thereof, but had no transfer of the said Island made by said Joseph Galloway; yet by his attainder it is become the estate of the public; the military barracks, situate between Second and Third-streets continued in the Northern-Liberties of the city of Philadelphia, together with the lots and pieces of land thereunto belonging and appertaining, as the same were purchased of Anthony Wilkinson and John Jennings and wife, for the purpose of erecting the said barracks at the cost of the late province, now state, of Pennsylvania, and as the same are now vested in the heirs of Joseph Fox, deceased;‡ and the military barracks in the north part of the borough of Lancaster, in the county of Lancaster, together with the lot of land thereunto appertaining, as the same are now held by James Webb, in trust for the public; the public store-house situate on the western side and near the north end of Queen-street in the said borough, and the magazine for securing gun powder in the said borough, lying eastward of the said store-house;§ and the new gaol and work-house of the city and county of Philadelphia, on Walnut-street and Sixth-street, in the city of Philadelphia, as the same is now vested in the Commissioners of the city and county of Philadelphia, and their successors, who held the same as a body politic and corporate, for that purpose;¶ and all and singular the court-houses, gaols, prisons and work-houses, together with the lots of land whereon they severally stand, or which are appurtenant to them, of and in the several counties of this state, as they now are or heretofore have been vested in any feoffices or trustees, or in any bodies politic and corporate for the several use of the said counties respectively; and also all other real estate to the good people of this commonwealth, or of any county thereof, in their public and collective capacity belonging, or to their use or interest vested and conveyed, shall be, and hereby are, vested in the commonwealth, freed and discharged, and absolutely acquitted, exempted and exonerated, of, from and against all claims and demands of the said

\* Chap. 357,  
1743, sect. 18.

† Chap. 1084.  
directed to  
be sold.

§ Chap. 1492.  
directed to  
be sold.

¶ Chap. 673



1780. feoffees or trustees, or bodies politic and corporate, or of the survivors and survivor of such feoffees and trustees, and every of them, and of the heirs of such survivors and survivor for ever; subject however to the several uses, intents, trusts, dispositions and direction, for which the same have been heretofore respectively appointed and limited, and to none other; saving and always reserving to every person and persons, bodies politic and corporate, his and their heirs, successors, other than the said feoffees and trustees, all such estates, right, title and interest, of, in, to and out of the premises vested in trust as aforesaid, as they, every or any of them, had before the passing of this act, or could or might have had or enjoyed, in case this act had not been made or passed.

Proviso.

III. *Provided always*, That nothing in this act shall extend to vest in the commonwealth the old temporary prison, situate on the eastern side of the main cross street in the town of Bedford; nor to vest in the commonwealth the old gaol and work house, nor the land thereunto appertaining, fronting on the south side of High-street, and extending along Third-street from Delaware in the city of Philadelphia, as the same was holden by Joshua Carpenter, in trust, for the use of the city and county of Philadelphia: *But it is hereby enacted*, That the Supreme Executive Council may and shall sell and convey the said old gaol and work-house in the city of Philadelphia to the private use of the purchaser, by deed or deeds under the great seal, signed by the President or Vice-President of the said council, for the sole benefit and advantage notwithstanding of the said city and county.

Assembly may from time to time appoint Trustees for the Province Island.

IV. *And provided also*, That the Representatives of the freemen of this commonwealth in General Assembly met shall and may from time to time, by their vote, appoint trustees, to take upon them the care and management of the island called the Province-Island, together with its appurtenances, and to receive the rents, issues and profits thereof, and to account for the same, and to make leases, in like manner, and under like restrictions, as the feoffees or trustees of the said island, heretofore vested with the estate thereof might or could do.

Former laws repealed.

V. *And be it further enacted*, That so much of an act of Assembly of the late province of Pennsylvania, entitled, *An act for vesting the Province-Island, and the buildings thereon erected, and to be erected, in Trustees, for providing an Hospital for such sick passengers as shall be imported into this province, and to prevent the spreading of infectious distempers*,\* passed on third day of February, which was in the year of our Lord one thousand seven hundred and forty-three; and so much of another act of Assembly of the said late province, entitled *An act for vesting the State-house and other public buildings, with the lots of ground whereon the same are erected, together with other lots situate in the city of Philadelphia, in Trustees, for the uses therein particularly mentioned*,† passed on the twentieth of February, which was in the year of our Lord one thousand seven hundred and thirty-six; and so much of another act of Assembly of the said late province, entitled *An act for erecting a new gaol, work-house, and house of correction, in the city of Philadelphia*,‡ passed on the twenty-sixth day of February, which was in the year of our Lord one thousand

\* Chap. 357.

† Chap. 343.

‡ Chap. 673.

seven hundred and seventy-three; and so much of another act of 1780. Assembly of the said late province, entitled *An act to enable Jeremiah Langhorne, William Biles, Joseph Kirkbride, junior, Thomas Watson, practitioner in Physic, and Abraham Chapman, to build a new Court-house and prison in the county of Bucks*, passed on the twentieth day of March, Anno Domini one thousand seven hundred and twenty-five; and so much of the several acts of assembly of the said late province, by which the counties of Lancaster, York, Cumberland, Berks, Northampton, Bedford, Northumberland, and Westmoreland, were erected and established; and so much of an act of Assembly of this commonwealth, entitled *An act for vesting the house and lots therein described in Trustees, for the use of the President of the Supreme Executive Council of this state for the time being*, § Chap. 511. passed on the eighteenth day of March last, and of any other act of Assembly, which is hereby altered or supplied by, or is repugnant to, the provisions and directions of this act, is hereby repealed and made void.

Passed 28th February, 1780.—Recorded in Law Book vol. I. page 330.

## CHAPTER DCCCLXIX.

*An ACT for the more effectual supply and honourable reward of the Pennsylvania troops, in the service of the United States of America.*

WHEREAS the honourable the Congress of the United States did, on the fifteenth day of May, Anno Domini one thousand seven hundred and seventy-eight, resolve and provide in the words and manner following, viz. That all military officers commissioned by Congress, who now are, or hereafter may be, in the service of the United States, and shall continue therein during the war, and do not now hold any office of profit under the said states, or any of them, shall, after the conclusion of the war, be entitled to receive annually, for the term of seven years, if they shall live so long, one half of the present pay of such officer; provided that no General officer of the cavalry, artillery, or infantry, shall be entitled to receive more than the one half part of the pay of a Colonel of such corps respectively; and provided that this resolution shall not extend to any officer in the service of the United States, unless he shall have taken the oath of allegiance to, and shall actually reside within, some one of the United States: And whereas the military commissioned officers in the federal army of the United States, belonging to this state, have not only distinguished themselves in the field by their courage and bravery, but have exhibited extraordinary proofs of patriotism, disinterestedness, and sacrifice of private considerations to the public good.

II. And whereas the continuance of the war, and the signal services and sufferings of the said troops since the passing the above resolve, have made it highly proper to enlarge and extend the benefits thereof: And the Legislature of this state, being desirous to mani-



1780. fest a just sense of the important services which have been rendered by the said officers and soldiers, and in future to supply them with such necessaries, as may enable them to support and perform the duties of their several stations with cheerfulness and alacrity :

Half-pay allowed by Congress continued for life.

III. *Be it enacted, and it is hereby enacted,* That the half-pay aforesaid, so far as it respects the military commissioned officers of this state, in the service of the United States, shall be continued to the said officers, and every of them, surviving the said term of seven years, and who shall be entitled and admitted to the same in pursuance of the said resolves, for and during the lives of such officers and officer, and that the rules following shall be duly observed in the application and payment thereof: that is to say,

Exception.

*First,* That no person shall have or receive any part of the same, who was a minor, under the age of eighteen years, when the regiment or company in which he served shall be reduced.

*Secondly,* That no person shall have or receive the said half-pay, or any part thereof, but such as have done actual service in some regiment or company.

*Thirdly,* That the said half-pay, nor any part thereof, shall be allowed to any person by virtue of any warrant or appointment, except to such persons as would have been otherwise entitled to receive the same, as reduced officers, or to such brevet officers as are hereafter mentioned.

*Fourthly,* That the same shall not be allowed or extended to the officers of any new raised corps, or of any troops who have been enlisted for a shorter term than the continuance of the present war.

*Fifthly,* That the same shall not be allowed to any officer, who shall not have taken the oath or oaths of allegiance, which now are or hereafter may be required of the other subjects of this state, and also reside in some one of the United States.

Widows to receive half pay.

IV. *And be it further enacted,* That, from and after the publication of this act, the widows of such commissioned military officers as have fallen in battle, or died in actual service or captivity, and whose husbands, if they had lived, would have been entitled to such half-pay, and those who may hereafter become the widows of officers so fallen in battle, or dying in actual service or captivity, during the continuance of the present war, shall be entitled to the half of the pay which their husbands were respectively entitled to whilst in said service, during their widowhood, and no longer.

Widows shall procure a certificate.

V. *And be it further enacted,* That on the petition of any of the said widows to the Orphans' Court in any county of this state, the said court shall, in a summary way, enquire into the claim of such widow to the half-pay allowed by this act; and the said court, on receiving satisfactory proof of the marriage, and that the husband of the said widow would, if he had lived, have been entitled to half-pay under this act, which proof shall be by a certificate under the hand and seal of the Colonel or other commanding officer of the regiment, battalion or company, to which the deceased last belonged, setting forth the commission which he last held, and the regiment, battalion or company, in which he last served, and also the time and place of his death, such certificate to be attested under the hands of two witnesses; or, in the case of the widow of such

commanding officer, from the officer next in command; and the said petitioner shall produce also to the court the commission, under which such claim shall be made, or at least a certificate from the honourable the Board of War of the United States, that such commission had issued; whereupon, if the said court shall be satisfied of the justice of such claim, it shall proceed to ascertain the same, by way of annuity, and make an order on the County Treasurer for the payment of such annuity, either quarterly or annually, as to the said court shall seem meet, according to the true intent and meaning of this act; and the said Treasurer shall advance and pay the said annuity, as it becomes due, out of any monies belonging to the state which he may have in his hands, and shall be allowed the same in passing his account. 1780. [See chap. 1482.]

VI. *And be it further enacted*, That the said Orphans' Court shall once in three months, in every year, examine the record of such annuities, and send an authentic list of the names of the said widows, and sums to which they are respectively entitled, to the County Treasurer, distinguishing therein the names of such annuitants as have died, or been married again; and the Clerk of the said court, once in every year, or oftener, if required, shall transmit a copy of such list to the Secretary of the Supreme Executive Council of this state. Orphans' Court shall examine the records of annuities every three months

VII. *And be it further enacted*, That all lands, which have been or may hereafter be granted within this state to any officers or soldiers of the line of this state, by virtue of any resolution of Congress or law of this state, as a reward for their services, shall be and are hereby exempted from taxation, for and during the life of such officer or soldier respectively, unless the same shall be transferred or aliened to any other person. Lands granted to officers and soldiers to be exempt from taxation. [So post. chap. 1126, sect. 33.]

[VIII. *And be it further enacted*, That every Major-General, Brigadier-General, Colonel, Lieutenant-colonel, Major, Captain, Lieutenant, Ensign, Chaplain, Surgeon and Surgeon's Mate, belonging to the troops of Pennsylvania, and engaged to serve during the present war, shall, during his continuance in actual service, be furnished with one complete suit of regimental uniform clothes once in every year, and no more, and that the Supreme Executive Council shall from time to time purchase and procure the same at the charge of this commonwealth, out of any of the unappropriated monies in the state treasury; the said suit of clothes to consist of the following articles, viz. one hat, one coat, one waistcoat, two pair of breeches, three pair of stockings, thread or worsted, three pair of shoes, three shirts, three stocks. Officers shall annually receive a complete uniform suit of clothes.

IX. And whereas the officers and soldiers of the troops of this state, in the army of the United States of America, enlisted for and during the continuance of the present war, and serving in the field, have been greatly distressed by the excessive advance in the price of divers necessaries and accommodations, not included in the ration of provisions furnished to them by the public, and also by the difficulty of procuring them at places distant from the place of manufacture or importation.

X. And whereas the Assembly of this state did heretofore, by sundry resolves, authorise and empower the Supreme Executive



1780. Council of this state to draw upon the State Treasurer from time to time for any sums of money, which they should judge necessary to relieve in some measure the necessities of the officers and soldiers belonging to this state, and serving in the army of the United States, and to appoint commissaries to purchase rum, sugar, coffee, tea, chocolate, tobacco, and hard soap, and such other articles, as to the said Council might appear necessary, and suitable for the comfort of the said troops, under such regulations and restrictions as are set forth and expressed in the said resolves :

XI. And whereas the Council, in the execution of the said resolves, did direct that the distribution and issue of the said enumerated articles should not exceed the ratio or proportion following, that is to say ; for each ration of provisions, to which each officer and soldier as aforesaid shall be respectively entitled by the acts of Congress, one pint of rum, half a pound of sugar, a quarter of a pound of coffee, one ounce of tea, half a pound of chocolate, and one quarter of a pound of tobacco, once in every week ; and the same having been found by experience to be beneficial and satisfactory,

Price which certain articles shall be furnished at to the army.

XII. *Be it enacted*, That the purchase and supply of the said enumerated articles shall be and are hereby continued, for the benefit of the said officers and soldiers of this state, during their actual service in the army of the United States, and that the said articles shall be distributed and issued to them in the proportions above set forth, and at the following prices, to wit ; rum or spirits by the gallon five shillings ; Muscovado sugar three shillings and nine pence per pound ; tea at twelve shillings per pound ; hard soap at one shilling and three pence per pound ; tobacco at nine pence per pound ; or under such other rules and regulations, as the President or Vice-President in Council, may and shall from time to time direct ; and that the Supreme Executive Council shall defray the expense of procuring the said articles, and the distribution thereof, from time to time, out of such monies as are or may be in the State Treasury, not specially appropriated.

Proviso.

XIII. *Provided*, That no officer or soldier shall be deemed entitled thereto, unless while on actual duty in camp or garrison, or march, and that no issues be made thereof, at any time, under the name or character of back rations.

Proviso.

XIV. *Provided also*, That no officer shall be deemed entitled to a proportion of the said cloathing or stores for more than one commission, nor any officer of this state holding or appointed to any rank by brevet, unless when so appointed and distinguished by the honourable Congress for extraordinary merit, and so signified in his commission ; in which case, and the same being duly made known to the Supreme Executive Council, such brevet officer shall be empowered by special order of Council to receive like privileges and benefits as other officers in the line.

Officers, seamen and marines shall receive like allowances with the army.

XV. *And be it further enacted*, That the officers, seamen and marines, employed in the service of this state, and who were in actual service on the thirteenth day of March last, and shall continue therein till the end of the present war, or till honourably discharged, shall be entitled to the allowances and benefits herein before granted to the military officers and soldiers, respectively, of the Pennsylv-

nia troops, as to half-pay and cloathing, and to like supply and distribution of the articles above enumerated, subject to the same limitations and conditions; the half-pay of the said officers of the navy to commence at the expiration of the present war, or their discharge.]

1780.

**XVI.** *Be it also enacted,* That the widows of any of the said officers of the said navy, who now are or have been in actual service, and have been killed or died in such service, shall be entitled to half-pay in the same manner, and under the same limitations and conditions, as the widows of officers in the land service herein before mentioned.

The widows of the officers of the navy entitled to annuities.

**XVII.** And whereas it may often happen that officers in both the sea and land service may be killed or die therein, having a child or children, and no wife, or such widow may re-marry, or die, in which case the said children may become destitute:

**XVIII.** *Be it therefore enacted,* That in such case the said Orphans' Court shall, and is hereby empowered to nominate one or more suitable persons to be guardians of the said child or children, and to order and direct the half-pay, to which the father would have been entitled, to be paid to such guardian or guardians, for such time, and in such manner, as to the said court shall seem meet, so as the same be not longer than such child or children respectively attains the age of fourteen years; and in like manner, in case of the death or marriage of any officer's widow, having a child or children, to transfer and set over the half-pay by her enjoyed to the use and benefit of such child or children, not exceeding the term aforesaid.

Provision made for the children of officers, [See the act of March 27th, 1790, chap. 1482.]

**XIX.** *And be it further enacted,* That all the officers and soldiers, who have been or shall be regularly transferred from any of the regiments forming the line of this state into the invalid regiment, and such transfer duly certified by the commanding officer thereof to the President or Vice-President in Council, shall be, and they are hereby entitled to all the benefits, privileges and advantages, which are by this act granted to any officers or soldiers belonging to this state. And in order that the persons for whom the benefits and advantages aforesaid are intended, may be clearly ascertained and determined,

and for the invalids from the Pennsylvania line.

**XX.** *Be it enacted,* That they are the officers and soldiers of the line of this state, in the federal army, consisting of eleven regiments of infantry, and the regiment of artillery commanded by Colonel Thomas Proctor, including the companies of artillery now or late commanded by the Captains Porter, Lee, Jones, and Coren, the invalids aforesaid, the Pennsylvania officers and soldiers in the several corps of guards, light dragoons, artillery, and infantry, other than the artificers, who are no part of the eighty-eight battalions originally apportioned on the states, and who are or shall be considered by the honourable Congress as part of the quota of this state, and accepted as such by the President or Vice-President in Council, and the naval officers above mentioned.

Who are the troops entitled to the benefits of this act.

**XXI.** *Provided always,* That no officer or soldier of the army shall be admitted to the benefits and advantages aforesaid, unless he be ascertained to belong to the quota of this state, in the manner and form directed and prescribed in and by an act of Congress of

Proviso.



1780. the fifteenth day of March last, and accepted by the President or Vice-President in Council as aforesaid; nor shall any such officer or soldier be entitled to the continuance of the same, unless it shall appear, by returns to be made every three months, or oftener by the commanding officer of the division, brigade, or separate command, under whom such officer or soldier shall serve, that such person shall continue in the federal army; nor unless such officer or soldier shall be certified to be commissioned and enlisted for and during the present war.

[XXII. And whereas the public service may hereafter require further arrangements, regulations and alterations, to be made of the regiments in the line of the state, and of the officers who may compose the same, or be entitled to the benefits of this act :

Council to  
make new  
arrange-  
ments, and  
opposers to  
forfeit, &c.

XXIII. *Be it therefore enacted*, That if any person entitled to the emoluments, privileges and benefits, by this act allowed and granted, shall refuse to conform to such arrangements, regulations and alterations, as may be hereafter made by the honourable the Congress of these United States, or by the Supreme Executive Council of this state, in concurrence with the Commander in Chief of the armies of the United States, it shall and may be lawful, and the President or Vice-President in Council are hereby authorized to retain and withhold the said benefits and advantages hereby given from any such regiment, troop, company, officer or person so refusing, for and during such refusal, any thing herein before contained to the contrary notwithstanding.

Disputes to  
be adjusted  
by the Coun-  
cil.

XXIV. *Be it also enacted*, That if any difficulty or doubt should arise concerning the persons entitled to the benefits and advantages granted by this act, other than the widows and children aforesaid, the same shall be adjudged and finally determined by the Supreme Executive Council of this state.]

Passed 1st March, 1780.—Recorded in Law Book vol. I. page 335. (*p*)

(*p*) By chap. 930, post. the benefit of half-pay of Captain was extended to Chaplains and Surgeons. By chap. 944, post. the benefit of half-pay was extended to the officers of the hospital and medical department; and the widows and children of such officers of the

state regiment or flying camp, as have fallen in battle, or died in captivity, are entitled to the benefits of the act in the text; which were also conferred, by an act of the 23d of September, 1783, post. chap. 1031, on certain enumerated officers.

## CHAPTER DCCCLXX.

### *An ACT for the gradual abolition of slavery.*

WHEN we contemplate our abhorrence of that condition, to which the arms and tyranny of Great-Britain were exerted to reduce us, when we look back on the variety of dangers to which we have been exposed; and how miraculously our wants in many instances have been supplied, and our deliverances wrought, when even hope and human fortitude have become unequal to the conflict, we are unavoidably led to a serious and grateful sense of the manifold blessings, which we have undeservedly received from the hand

of that Being, from whom every good and perfect gift cometh. Impressed with these ideas, we conceive that it is our duty, and we rejoice that it is in our power, to extend a portion of that freedom to others, which hath been extended to us, and release from that state of thralldom, to which we ourselves were tyrannically doomed, and from which we have now every prospect of being delivered. It is not for us to enquire why, in the creation of mankind, the inhabitants of the several parts of the earth were distinguished by a difference in feature or complexion. It is sufficient to know, that all are the work of an Almighty hand. We find, in the distribution of the human species, that the most fertile as well as the most barren parts of the earth are inhabited by men of complexions different from ours, and from each other; from whence we may reasonably, as well as religiously, infer, that He, who placed them in their various situations, hath extended equally his care and protection to all, and that it becometh not us to counteract his mercies. We esteem it a peculiar blessing granted to us, that we are enabled this day to add one more step to universal civilization, by removing, as much as possible, the sorrows of those, who have lived in undeserved bondage, and from which, by the assumed authority of the Kings of Great-Britain, no effectual, legal relief could be obtained. Weaned, by a long course of experience, from those narrow prejudices and partialities we had imbibed, we find our hearts enlarged with kindness and benevolence towards men of all conditions and nations; and we conceive ourselves at this particular period extraordinarily called upon, by the blessings which we have received, to manifest the sincerity of our profession, and to give a substantial proof of our gratitude.

II. And whereas the condition of those persons, who have heretofore been denominated Negro and Mulatto slaves, has been attended with circumstances, which not only deprived them of the common blessings that they were by nature entitled to, but has cast them into the deepest afflictions, by an unnatural separation and sale of husband and wife from each other and from their children, an injury, the greatness of which can only be conceived by supposing that we were in the same unhappy case. In justice, therefore, to persons so unhappily circumstanced, and who, having no prospect before them whereon they may rest their sorrows and their hopes, have no reasonable inducement to render their service to society, which they otherwise might, and also in grateful commemoration of our own happy deliverance from that state of unconditional submission, to which we were doomed by the tyranny of Britain.

III. *Be it enacted, and it is hereby enacted,* That all persons as well Negroes and Mulattoes as others, who shall be born within this state from and after the passing of this act, shall not be deemed and considered as servants for life, or slaves; and that all servitude for life, or slavery of children, in consequence of the slavery of their mothers, in the case of all children born within this state from and after the passing of this act as aforesaid, shall be, and hereby is, utterly taken away, extinguished, and for ever abolished.

IV. *Provided always, and be it further enacted,* That every Negro and Mulatto child, born within this state after the passing of

No child  
born hereaf-  
ter to be a  
slave.

Negro and  
Mulatto  
children to



1780.

be servants  
till twenty-  
eight years  
of age.

this act as aforesaid (who would, in case this act had not been made, have been born a servant for years, or life, or a slave) shall be deemed to be, and shall be, by virtue of this act, the servant of such person, or his or her assigns, who would in such case have been entitled to the service of such child, until such child shall attain unto the age of twenty-eight years, in the manner, and on the conditions, whereon servants bound by indenture for four years are or may be retained and holden; and shall be liable to like correction and punishment, and entitled to like relief, in case he or she be evilly treated by his or her master or mistress, and to like freedom dues and other privileges, as servants bound by indenture for four years are or may be entitled, unless the person, to whom the service of any such child shall belong, shall abandon his or her claim to the same; in which case the Overseers of the poor of the city, township or district, respectively, where such child shall be so abandoned, shall, by indenture, bind out every child so abandoned, as an apprentice, for a time not exceeding the age herein before limited for the service of such children.

All slaves  
to be regis-  
tered before  
1st Novem-  
ber next.

V. *And be it further enacted*, That every person, who is or shall be the owner of any Negro or Mulatto slave or servant for life or till the age of thirty-one years, now within this state, or his lawful attorney, shall, on or before the said first day of November next, deliver or cause to be delivered, in writing, to the Clerk of the peace of the county, or to the Clerk of the court of record of the city of Philadelphia, in which he or she shall respectively inhabit, the name and surname, and occupation or profession of such owner, and the name of the county and township, district or ward, wherein he or she resideth; and also the name and names of any such slave and slaves, and servant and servants for life, or till the age of thirty-one years, together with their ages and sexes, severally and respectively set forth and annexed, by such person owned or statedly employed, and then being within this state, in order to ascertain and distinguish the slaves and servants for life, and till the age of thirty-one years, within this state, who shall be such on the said first day of November next, from all other persons; which particulars shall, by said Clerk of the sessions and Clerk of the said city court, be entered in books to be provided for that purpose by the said Clerks; and that no Negro or Mulatto, now within this state, shall, from and after the said first day of November, be deemed a slave or servant for life, or till the age of thirty-one years, unless his or her name shall be entered as aforesaid on such record, except such Negro and Mulatto slaves and servants as are herein after excepted: the said Clerk to be entitled to a fee of two dollars for each slave or servant so entered as aforesaid, from the Treasurer of the county, to be allowed to him in his accounts.

Owners of  
slaves,  
though not  
registered,  
to be liable  
for their sup-  
port unless,  
&c.

VI. *Provided always*, That any person, in whom the ownership or right to the service of any Negro or Mulatto shall be vested at the passing of this act, other than such as are herein before excepted, his or her heirs, executors, administrators and assigns, and all and every of them, severally, shall be liable to the Overseers of the poor of the city, township or district, to which any such Negro or Mulatto shall become chargeable, for such necessary expense, with

costs of suit thereon, as such Overseers may be put to, through the neglect of the owner, master or mistress of such Negro or Mulatto, notwithstanding the name and other descriptions of such Negro or Mulatto shall not be entered and recorded as aforesaid, unless his or her master or owner shall, before such slave or servant attain his or her twenty-eighth year, execute and record in the proper county, a deed or instrument, securing to such slave or servant his or her freedom.

1780.

VII. *And be it further enacted,* That the offences and crimes of Negroes and Mulattoes, as well slaves and servants as freemen, shall be enquired of, adjudged, corrected and punished, in like manner as the offences and crimes of the other inhabitants of this state are and shall be enquired of, adjudged, corrected and punished, and not otherwise, except that a slave shall not be admitted to bear witness against a freeman.

Negroes to be tried like other inhabitants.

VIII. *And be it further enacted,* That in all cases, wherein sentence of death shall be pronounced against a slave, the jury, before whom he or she shall be tried, shall appraise and declare the value of such slave; and in case such sentence be executed, the court shall make an order on the State-Treasurer, payable to the owner, for the same, and for the costs of prosecution, but in case of remission or mitigation, for the costs only.

Jury to value in case of sentence of death.

IX. *And be it further enacted,* That the reward for taking up runaway and absconding Negro and Mulatto slaves and servants, and the penalties for enticing away, dealing with, or harbouring, concealing or employing, Negro and Mulatto slaves and servants, shall be the same, and shall be recovered in like manner, as in case of servants bound for four years.

Reward for taking up runaway slaves same as for white servants.

X. *And be it further enacted,* That no man or woman of any nation or colour, except the Negroes or Mulattoes who shall be registered as aforesaid, shall, at any time hereafter be deemed, adjudged or holden, within the territories of this commonwealth, as slaves or servants for life, but as free men and free women; except the domestic slaves attending upon Delegates in Congress from the other American states, foreign Ministers and Consuls, and persons passing through or sojourning in this state, and not becoming resident therein, and seamen employed in ships not belonging to any inhabitant of this state, nor employed in any ship owned by any such inhabitant; provided such domestic slaves be not alienated or sold to any inhabitant, nor (except in the case of Members of Congress, Foreign Ministers and Consuls) retained in this state longer than six months.

None to be deemed slaves but those registered.

XI. *Provided always, and be it further enacted,* That this act, or any thing in it contained, shall not give any relief or shelter to any absconding or runaway Negro or Mulatto slave or servant, who has absented himself, or shall absent himself, from his or her owner, master or mistress, residing in any other state or country, but such owner, master or mistress shall have like right and aid to demand, claim and take away his slave or servant, as he might have had in case this act had not been made; and that all Negro and Mulatto slaves now owned and heretofore resident in this state, who have absented themselves, or been clandestinely carried away, or who may be employed abroad as seamen, and have not returned or been

Except run-aways from other states.

Slaves carried away, &c. from this state, may be brought



1780.  
back and  
registered.

brought back to their owners, masters or mistresses, before the passing of this act, may, within five years, be registered, as effectually as is ordered by this act concerning those who are now within the state, on producing such slave before any two Justices of the Peace, and satisfying the said Justices, by due proof of the former residence, absconding, taking away, or absence of such slaves, as aforesaid, who thereupon shall direct and order the said slave to be entered on the record as aforesaid.

XII. And whereas attempts may be made to evade this act, by introducing into this state Negroes and Mulattoes bound by covenant to serve for long and unreasonable terms of years, if the same be not prevented :

No Negroes  
or Mulattoes,  
other than infants,  
to be bound  
for longer  
than seven  
years.

XIII. *Be it therefore enacted*, That no covenant of personal servitude or apprenticeship whatsoever shall be valid or binding on a Negro or Mulatto for a longer time than seven years, unless such servant or apprentice were, at the commencement of such servitude or apprenticeship, under the age of twenty-one years ; in which case such Negro or Mulatto may be holden as a servant or apprentice, respectively, according to the covenant as the case shall be, until he or she shall attain the age of twenty-eight years, but no longer.

Repeal of  
former acts.

\* Chap. 143.

† Chap. 292.

‡ chap. 468.

§ Chap. 681.

XIV. *And be it further enacted*, That an act of Assembly of the province of Pennsylvania, passed in the year one thousand seven hundred and five, entitled *An act for the trial of Negroes* ;\* and another act of Assembly of the said province, passed in the year one thousand seven hundred and twenty-five, entitled *An act for the better regulating of Negroes in this province* ;† and another act of Assembly of the said province, passed in the year one thousand seven hundred and sixty-one, entitled *An act for laying a duty on Negro and Mulatto slaves imported into this province* ;‡ and also another act of Assembly of the said province, passed in the year one thousand seven hundred and seventy-three, entitled *An act for making perpetual an act for laying a duty on Negro and Mulatto slaves imported into this province, and for laying an additional duty on said slaves*,§ shall be, and are hereby repealed, annulled and made void. (q)

Passed 1st March, 1780.—Recorded in Law Book vol. I. page 339.

(q) Citizens of other states, compelled by the enemy to take refuge in Pennsylvania with their slaves are exempted, on certain terms, from the operation of this act during the war ; (chap. 942.) By an act of the 13th of April, 1782, (chap. 962,) the inhabitants of the counties of Westmoreland and Washington (who were doubtful, before the boundary between Pennsylvania and Virginia was settled, to which state they belonged) were allowed until the 1st of January, 1783, to register such slaves or servants, as they held on the 23d of September, 1780.

By a supplement to the act in the text, (chap. 1334,) it is provided, that "Slaves brought into this state by persons inhabiting or residing therein, or intending to inhabit and reside there-

in, shall immediately be free to all intents and purposes." Slaves or servants for term of years shall not be removed out of the state without their own consent, testified by two Justices ; proceedings thereon ; and penalty on transgressing. Persons possessed of any child, liable to serve till twenty-eight years old, shall make entry thereof with the clerk of the peace on or before the 1st of April, 1789, or within six months after the birth of such child ; proceedings thereon. Vessels employed in the slave trade liable to forfeiture ; and penalty on building or equipping them. Slaves or servants for term of years, in the cases of husband and wife, or parent and child, not to be separated to a greater distance than ten miles, with the design of changing their habitation, unless the child be above four

years old, or with consent of the parties, testified as aforesaid. Penalty on forcibly or fraudulently, by seduction, carrying any negroes or mulattoes out of the state, with design to sell, or keep them slaves or servants for a term of years. By the wardens' act, the duty called head-money is taken off in all cases, except in the case of negro and mulatto slaves imported, chap. 1687, sect. 22.

A Society to promote the gradual abolition of slavery was incorporated, (chap. 1465.)

See Dallas's reports, pages 167, 469. [A negro born before the 1st March, 1780, viz. in 1779, and not recorded agreeably to the act, cannot be held as a servant till 28 years of age, but is absolutely free.] (*Note to former edition.*)

Where the jury makes the price of the negro slave, in a writ *de homine replegiando*, the measure of damages, if accepted by the master, it will, in equity, and perhaps by operation of law too, emancipate the negro. *Copperthwaite v. Jones*. 2 Dallas, 55.

A citizen of another state, on a visit to this state, with his slave, in case of the slave's refusal to return, has a right to carry him out of the state, and is entitled to the aid of the magistrates for that purpose. *Respublica v. Richards*, 2 Dallas, 224.

And by the constitution of the United States, art. 4, sect. 2, no person held to service or labour in one state, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labour, but shall be delivered up, on claim of the party to whom such service or labour may be due.

Free negroes or mulattoes can be bound in this state as servants, only until 21 years of age; but those who have been bound in other states, and brought into this state, may be compellable to serve until 28 years old, according to the terms of their indenture. *Respublica v. The Gaoler of Philadelphia County*, April 1794, Supreme Court, MSS. Reports.

A citizen of Maryland, purchasing lands in Westmoreland county, in March 1780, but not actually residing thereon with his slaves till December following, has not the benefit of registering his slaves under the act of 13th April, 1782, (chap. 962,) but they are entitled to their freedom on being brought into the state. *Respublica v. Blackmore Washington*, May 1797, cor. *Yeates & Smith*, J. MSS. Reports, Supreme Court, *Addison's Reports*, 284.—S. P. *Negro John v. Benoni Dawson, Nisi Prius*, May 1799. Same Judges. MSS. Reports.

The owner of a mulatto, registering him as a slave, in the county wherein he lived, without expressing the county, the registry held to be valid. *Cook v. Neaff*.—

So the registry of a negro as a slave, without adding, *for life*, is good. The word *slave* in its common acceptation, signifies, *ex vi termini*, a perpetual servant. *Respublica v. Wm. Finley, Esq.* Both cases, at Franklin County, Circuit Court, October 1801, before *Yeates & Smith*, J. MSS. Reports.

Where the master, in order to procure the possession of a runaway slave, manumits him, in consideration of his agreeing to serve for four years, he shall be bound thereby, and shall not avail himself of the pretext that the manumission was a sham. *Stiles v. Richardson*, Supreme Court, September 1804. MSS. Reports.

Only the owner, or his lawful attorney can register a negro, or mulatto. The act of a stranger in such case, is merely void. The words of the 5th section of the act are imperious. *Negro Essex v. Wm. McCulloch*, Circuit Court, Fayette County, October 1804. Cor. *Yeates & Smith* J. MSS. Reports.

An indenture from a negro lad to his master, in consideration of manumission from slavery, is void, unless executed within six months after his being brought into the state, or such terms agreed on within that time. *Respublica v. Smith*, Supreme Court, March 1805. MSS. Reports.

## CHAPTER DCCCLXXIII.

*An ACT for confirming and amending the charter of the German Lutheran congregation in and near the city of Philadelphia, in the state of Pennsylvania.*

Passed 3d March, 1780.—Private act.—Recorded in Law Book vol. I. page 346.



1780.

## CHAPTER DCCCLXXIV.

[Supplement  
to this act,  
March 28th,  
1787, chap.  
1279.]

*An ACT for re-establishing the charter of the second Presbyterian church in the city of Philadelphia, and for other purposes therein mentioned.*

Passed 5d March, 1780.—Private act.—Recorded in Law Book vol. I. page 349.

## CHAPTER DCCCLXXV.

*An ACT for incorporating the society formed for the relief of poor, aged and infirm masters of ships, their widows and children.*

Passed 4th March, 1780.—Private act.—Recorded in Law Book vol. I. page 350. (r)

[(r) This act repealed and supplied the former charter, chap. 609.]

## CHAPTER DCCCLXXVII.

*An ACT to restore and ascertain the value of divers fines, penalties and forfeitures, hereinafter mentioned, which may be incurred by the breach of certain acts of Assembly of this commonwealth. (s)*

IV. AND whereas, by the invasion of this state by the enemy, in the years one thousand seven hundred and seventy-seven, and one thousand seven hundred and seventy-eight, the trustees of the Loan-Office of this state became separated and dispersed, and discharges of mortgages were made by one trustee only :

V. *Be it therefore enacted*, That all and every discharge of any mortgage or mortgages, which have been made by one Trustee, as aforesaid, or which shall hereafter be made by one Trustee, to be appointed by the House of Assembly, shall be taken and held to be good and valid, any thing in any law to the contrary notwithstanding.

Passed 8th March 1780.—Recorded in Law Book vol. I. page 358.

(s) By this act the fines, penalties and forfeitures, declared for the breach of preceding laws, were to be regulated by the price of wheat; but this provision, which was all the act contained, except the sections here reprinted, was repealed, chap. 934, sect 15, post. [This section is now obsolete and the power vested in the State Treasurer]

## CHAPTER DCCCLXXVIII.

*An ACT for the amendment of the laws relative to the punishment of treasons, robberies, misprisions of treasons, and other offences. (t)*

WHEREAS, in and by the act of Assembly, entitled *An Act for the advancement of justice, and the more certain administration thereof*, made and passed the thirty-first day of May, in the year

(t) For a general reference to the laws respecting the Judicial Department, see chap. 236; and to the penal laws, see *ibid.* chap. 255.

Mortgages may be discharged by one Trustee. [Original act, ante. chap. 672.]

of our Lord one thousand seven hundred and eighteen, the punishment of death is inflicted, in the case of robbery, upon such only as commit the same on or near the highway, so that no adequate provision seems to have been made for punishing the most atrocious robberies, if the same be committed elsewhere :

1780.

II. *Be it therefore enacted, and it is hereby enacted,* That from and after the passing of this act, if any person or persons shall commit robbery, which robbery is done by assaulting another, putting him in fear, and taking from his person money or other goods, to any value whatsoever, whether the same robbery, be committed on or near the highway or elsewhere, in any place or places, whatsoever, within this commonwealth, he or they so offending, his or their counsellors, aiders, comforters and abettors, being thereof duly convicted or attainted, or being indicted, and standing mute, or challenging peremptorily above the number of twenty persons returned to serve of the jury, shall suffer as felons, without benefit of clergy, in like manner as by the laws of this commonwealth is provided in the case of robbers on or near the highway. (u)

Robbery any  
where felony  
as on the  
highway.

III. And whereas the forfeiture of goods and chattels, in the case of manslaughter, is rarely exacted, and the burning in the hand of such felons in more heinous and aggravated instances of this kind of homicide, which may approach nearly to murder, is too light and inadequate a punishment ; to the end, therefore, that the lives of the citizens of this commonwealth may be guarded and preserved from danger,

IV. *Be it enacted,* That in all cases of convictions of manslaughter, other than by stabbing, as described in the act of Assembly here-in before mentioned, the said forfeiture shall be removed, and hereafter no more incurred ; but instead thereof the court shall give judgment against such offender of imprisonment, for any time not exceeding two years, and of fine, at the discretion of the court ; and moreover, shall sentence such offender to find security for his good behaviour during life. And in order for the punishment by banishment of offenders, whose lives might be spared, and at the same time whose wicked conduct and example may render it highly dangerous that they should remain and enjoy the benefits of this free state, and to lessen sanguinary punishments : (v)

Forfeiture in  
man-slaugh-  
ter removed,  
but impris-  
onment and  
fine added.

V. *Be it enacted,* That it shall and may be lawful to and for the President or Vice-President and Council of this commonwealth, upon the prayer of any person or persons under sentence of death for treason or felony, to grant to such person or persons a pardon, so far as respects his, her or their lives, consonant with the limitations of the constitution, on condition, that such person or persons shall within a limited time depart from this state to foreign parts

Council may  
pardon, on  
condition of  
departing  
the United  
States.

(u) The punishment of imprisonment at hard labour is now substituted for capital punishment in the case of robbery, (chap. 1230, 1505, 1766.) In case a prisoner stands mute, &c. the plea of not guilty shall be entered, and the trial proceed, as if he had pleaded himself, (chap. 1572, sect. 5.) The convict, in case of robbery, or burglary, shall be sentenced to make restitution, or pay

the value of the goods stolen. *Ibid.* sect. 9.

(x) The act of the 22d April, 1794, chap. 1766, abolishes the punishment of death in all cases, except murder of the first degree. For the extension of the statute against stabbing, see chap. 236, sect. 9. For the existing punishment of voluntary, or involuntary, manslaughter, see chap. 1766, sect. 7.



1780. beyond the sea, and that he or they shall not return into this state, or any of the United States of America; and that if any person or persons so pardoned on the condition aforesaid shall break the same condition, by not departing within the said time, or by returning again into this state, or any of the United States aforesaid, the same pardon shall be void, and such person or persons, not departing, or returning as aforesaid, shall suffer death, according to the sentence which had been before pronounced against them. (y)

In treason none to suffer, save the offender, after peace with Britain, &c.

VI. *And be it further enacted*, That no attainder of treason to be had, from and after the end of the present war between the United States of America and Great Britain, and the acknowledgment of the Independency of the said United States by the King of Great Britain, shall extend to the disinheriting of any heir, nor to the prejudice of any person or persons, other than the offender. And in order to the detecting and punishing, in some measure, persons accused of treason or misprision of treason by one witness, and at the same time to avoid confounding very different degrees of guilt in the same punishment, and for removing doubts concerning the legality thereof. (z)

Persons charged with treason may be proceeded against as for misdemeanor.

VI. *Be it enacted and declared*, That in all cases where any charge is made upon oath or affirmation against any person or persons, of facts amounting to treason, or misprision of treason, it shall and may be lawful for the Attorney-General, with the leave of the court, to proceed against and charge such person or persons with a misdemeanor, and give in evidence any act or acts of treason, or misprision of treason, by one witness, on the trial, or other proper and legal testimony, and such person or persons, upon conviction, shall suffer as in cases of misdemeanor. (a)

Passed 8th March, 1780.—Recorded in Law Book vol. I. page 359.

(y) The power to remit fines and forfeitures, and grant reprieves and pardons, except in cases of impeachment, is now vested in the Governor. Constitution, art. 2, sect. 9.

(z) This provision was made absolute, (chap. 1505, sect. 2,) and now, by the 19th sect. of the 9th art. of the existing constitution, it is declared "that

no attainder shall work corruption of blood, nor, except during the life of the offender, forfeiture of estate to the commonwealth." A similar provision, in the case of attainders for treason, is contained in the 3d sect. of the 3d art. of the federal constitution.

(a) For the law respecting treason, see ante. chap. 729.

## CHAPTER DCCCLXXIX.

*An ACT to increase the punishments of horse stealing.*

WHEREAS the punishments heretofore provided against the crime of horse stealing have not proved sufficient to deter evil minded persons from the commission thereof: For remedy whereof,

Punishment for first offence;

II. *[Be it enacted, and it is hereby enacted*, That if any person or persons, from and after the passing of this act, shall feloniously take and carry away any horse, mare or gelding, of the property of any other person or persons, or of the United States of America, and

shall be thereof convicted, every such person or persons so offending, for the first offence, shall stand in the pillory for one hour, and shall be publickly whipped on his, her or their bare backs with thirty-nine lashes, well laid on, and at the same time shall have his, her or their ears cut off, and nailed to the pillory; and for the second offence shall be whipped and pillored in like manner, and be branded on the forehead, in a plain and visible manner, with the letters H. T. (b)] 1780. second offence.

III. And whereas persons who have heretofore committed the offence of horse stealing have often escaped from justice, by reason of the insufficiency of the bail taken for their appearance to answer for the same :

IV. *Be it therefore enacted*, That, from and after the publication of this act, no person or persons, who shall be charged with the stealing of any horse, mare or gelding, on the direct testimony of one witness, or who shall be taken with such horse, mare or gelding, in his or her possession, shall be admitted to bail, otherwise than by one or more Justices of the Supreme Court. (c) Horse stealers not to be bailed, unless by a Judge of Supreme Court.

V. *And be it further enacted*, That so much of an act of Assembly of the late province of Pennsylvania, entitled *An Act for the advancement of justice, and more certain administration thereof*,\* and of the supplement thereto, as are contradictory to this act, and no more thereof, are repealed and made void. Repeal. \* Chap. 235

Passed 10th March, 1780.—Recorded in Law Book vol. I. page 360.

(b) For former laws respecting horse stealing, see chap. 236; and the notes there subjoined. See, also, ante. chap. 557, and post. chap. 908, where provision is made for keeping a register of horses sold at auction. The punishment for horse stealing was commuted to imprisonment at hard labour, by the successive acts for reformatiag the penal laws. See chap. 1230, 1505, sect. 3.

(c) For the laws respecting bail in criminal cases, see chap. 151, 236, 610; 1121, 1505, sect. 4; 1564, sect. 9.

## CHAPTER DCCCLXXXII.

*An ACT of free and general pardon and indemnity for the offences therein mentioned.*

WHEREAS divers unhappy disputes have heretofore subsisted between some of the subjects of this state, within the city of Philadelphia, which, by mutual misunderstandings, did, on the fourth day of October last, occasion a tumult and breach of the public peace within the said city, wherein sundry persons were unhappily killed in and near the house of James Wilson, Esquire, in Walnut-street, within the said city, for which the several parties concerned therein stand bound by recognizance to answer in due course of law :

II. And whereas, since the said tumult, a cordial quietude has taken place, and as the rigorous prosecution of justice in all cases is not expedient, inasmuch as it may tend to perpetuate enmity and discord between the citizens of the same State, when union and harmony are so necessary against the common enemy; and it being



1780. also recommended by the Supreme Executive Council of the State, as a measure of public benefit, to pass an act of indemnity and general pardon for the said offences :

All persons concerned in the tumult pardoned.

III. *Be it enacted, and it is hereby enacted,* That all and every the person and persons, party and parties, engaged in the said tumult and breach of the peace, or who stand charged therewith, or with any offence arising therefrom, which is punishable by the laws of this commonwealth, by whatsoever name or names they are called or known, be and shall, and they are hereby, pardoned, released, indemnified and discharged, to all intents and purposes whatsoever.

The pardon to be construed beneficially as to persons charged.

IV. *Be it also enacted,* That this free pardon, indemnity and oblivion, by the general words, clauses and sentences, before recited, shall be reputed, deemed, adjudged and expounded, in all courts and elsewhere, most beneficial and available to all and singular the subjects, persons and parties before mentioned, and to every of them, without any ambiguity, question or delay, to be made, pleaded or objected by this commonwealth, the Attorney-General thereof, or any person or persons acting under the authority thereof in their behalf. And also that this act shall be deemed, adjudged and taken to be a public act, and shall be judicially taken notice of as such by all Judges, Justices and other persons whomsoever, without specially pleading the same.

Public act.

Passed 13th March, 1780.—Recorded in Law Book vol. I. page 362.

### CHAPTER DCCCLXXXIII.

*An ACT for incorporating the American Philosophical Society, held at Philadelphia, for promoting useful knowledge. (d)*

Passed 15th March, 1780.—Private Act.—Recorded in Law Book vol. I. page 363.

(d) For other acts respecting this institution, see chap. 968, 1136, 1202.

### CHAPTER DCCCLXXXIV.

*An ACT to cure a defect in an act of Assembly, entitled An Act to confirm the estates and interests of the College, Academy and Charitable School of the city of Philadelphia, and to alter and amend the charters thereof, conformably to the revolution and the constitution of this commonwealth, and to erect the same into an University; and also an error in the date of another Act of Assembly, entitled A Supplement to an act, entitled An Act for the attainer of divers traitors, if they render not themselves by a certain day, and for vesting their estates in this commonwealth; and for more effectually discovering the same; and for ascertaining and satisfying the lawful debts and claims thereupon.*

WHEREAS in an act of Assembly, passed on the twenty-seventh day of November last, entitled, *An Act to confirm the estates*

and interests of the College, Academy and Charitable School of the city of Philadelphia, and to amend and alter the charters thereof, conformably to the revolution and the constitution of this commonwealth, and to erect the same into an University,\* the word College was, through mistake, inserted in the sixteenth section thereof, instead of the word University, by reason whereof the authority intended to be vested in two Justices of the Peace by said act to proceed, in a summary way, against persons refusing to deliver up to the Trustees of the said University, upon demand, the library, apparatus, mortgages, specialties, deeds or instruments, or other papers or books of record, or real estate of the said University, in custody or possession of such persons so refusing, may be disputed, and prove insufficient for the purposes designed by the Legislature: For remedy whereof,

1780:

[\* Ante. chap. 860, pa. 474.]

II. *Be it enacted, and it is hereby enacted,* That the said act shall be construed and taken for the benefit and relief of the Trustees of the said University, as fully as if the said University was named in the said sixteenth paragraph, in the stead and place of the word College, and the said Justices shall proceed accordingly.

The word College to be construed University.

III. And whereas an error in form hath been discovered in the date of an act of Assembly, entitled *A Supplement to an act entitled An Act for the attainder of divers traitors, if they render not themselves by a certain day, and for vesting their estates in the commonwealth; and for more effectually discovering the same; and for ascertaining, and satisfying the lawful debts and claims thereon,* by writing the word April at the foot of the record of the said act, instead of the word March, which, by the minutes of the General Assembly, recourse being thereunto had, appears to be the month wherein the said law was enacted; and advantage may perhaps be taken, from the error last mentioned, to weaken or elude the operation of the last recited act: For remedy whereof,

IV. *Be it further enacted,* That the last recited act shall have the same and equal effect and operation, as if the word March had been written at the foot of the said record, in the place where the word April has been erroneously written as aforesaid; and that all sales, transfers, leases, acts and proceedings whatsoever, had, made, suffered or done, under the said act of Assembly, shall be deemed as valuable and effectual in the law, to all intents and purposes, as if the said error or mistake had not been made.

The word March to have like effect as April. [Ante. chap. 821, pa. 467.]

Passed 16th March, 1780.—Recorded in Law Book vol. I. page 365.

## CHAPTER DCCCLXXXVI.

*An ACT to render the revenue arising from the excise on wine and spirits, and on licences to be granted to public houses, effective, and equal to the public necessities.*

SECTION VIII. And whereas the great profits and advantages of late gained by the keepers of inns, taverns, ale-houses, and retailers of wine, rum and other spirits, will easily admit that the



1780. public income, arising from licences to be granted to such persons, may be augmented to a rate in some degree proportioned to the increased prices of goods, merchandize and tavern charges, in order to answer the salaries necessary to be given to public officers :

Duty on tavern licences to be paid as fees of officers, and bond given accordingly.

[\* Ante. pa. 73, chap. 172.]

IX. *Be it therefore enacted, That, from and after the ninth day of August next, the money directed to be paid for such licences by the act of Assembly of the late province of Pennsylvania, entitled An Act that no public house or inn within this province shall be kept without licence, and the security directed to be given by tavern-keepers and other's, in one hundred pounds, before such licences be issued,\* shall be taken in a sum equivalent to the augmented price of such licence, and shall be deemed to be money of the value of ten shillings for a bushel of wheat, and estimated, collected, satisfied and paid, in like manner as the fees of certain officers, as aforesaid.*

Repeal of former laws.

[† Chap. 814.]

Except, &c.

X. *And be it further enacted, That an act of Assembly of this commonwealth, entitled An Act to increase the fees on tavern licences, the fines on tippling houses, and the rates of excise,† passed on the fifteenth day of March, which was in the year of our Lord one thousand seven hundred and seventy-nine, and every thing therein contained (saving the treble rates thereby laid upon tavern licences, which shall continue till the said ninth day of August next) shall, from and after the said first day of May next, be repealed and made void.*

Passed 17th March, 1780.—Recorded in Law Book vol. I. page 367. (e)

(e) By an act passed Sept. 21st, 1791. (post. chap. 1571.) all the acts for imposing and collecting an excise, were repealed (except as to prior duties and forfeitures,) and all the sections of this act, not printed, related to the excise. Other acts relating to the excise are chap. 672, 713, 732, 927, 1050, 1150. (See the titles of repealed acts.)

For a general reference to the acts respecting taverns, and tavern licences see ante pa. 74. notes to chap. 172.

The rate of tavern licences doubled post. chap. 1005.

The provision in the case of the officers, referred to in sect. 9, was contained in the act of 27th November, 1779, (chap. 864) since repealed.

## CHAPTER DCCCXC.

*An ACT to enable William Clingan, Thomas Bull, John Kinkead, Roger Kirk, John Sellers, John Wilson and Joseph Davis, to build a new court-house and prison in the county of Chester, and sell the old court-house and prison in the borough of Chester. (f)*

WHEREAS it has been represented to this House, that the holding of the Courts of General Quarter-Sessions of the Peace, Common Pleas, Nisi Prius, Oyer and Terminer and General Gaol Delivery, for the county of Chester, in the borough of Chester, is very inconvenient and burthensome to a great part of the inhabitants of the said county, as the situation of said borough is at an extreme corner of said county; and that it would be very commo-

(f) For various subsequent acts on this subject, and relating to the counties of Chester and Delaware, see post. chap. 1070, 1141, 1204, 1236, 1324, 1432, [Delaware county established.]

dious, and much for the advantage of the inhabitants in general, if 1780.  
the several courts were held at a more central part of the said county :

**II.** *Be it therefore enacted, and it is hereby enacted,* That it shall and may be lawful to and for the said William Clingan, Thomas Bull, John Kinkead, Roger Kirk, John Sellers, John Wilson and Joseph Davis, or any four or more of them, to purchase and take assurance to them, and their heirs, of a piece of land, situate in some convenient place of the said county, in trust and for the use of said county, and thereon to build and erect, or cause to be built and erected, a court-house and prison, sufficient to accommodate the public service of the said county, and for the ease and convenience of the said inhabitants.

William Clingan, &c. to build a new Court-house, &c.

**III.** *And be it enacted,* That when the said court-house and prison shall be erected as aforesaid, that from thenceforth the several Courts of General Quarter-Sessions, Common Pleas, Nisi Prius, Oyer and Terminer and General Gaol Delivery, for the said county, shall be holden and kept at the said court-house, when the same is built and erected in the place so to be provided as aforesaid.

To be the Court-house of said county.

**IV.** *And be it further enacted,* That it shall and may be lawful that the said William Clingan, Thomas Bull, John Kinkead, Roger Kirk, John Sellers, John Wilson and Joseph Davis, or any four or more of them, shall have full power to expose to sale, by public vendue to the highest bidder, the old court-house, prison and work-house, with all and singular the appurtenances and hereditaments thereunto belonging, situate in the borough of Chester aforesaid, and to give assurances to the heirs and assigns of the purchaser or purchasers for ever; and the monies therefrom arising shall be appropriated towards paying for the lands to be purchased, and the new court-house and prison to be built in the said place, so as aforesaid to be provided.]

Old Court-house, &c. to be sold. [Obsolete.]

**V.** *And be it further enacted,* That for the defraying the remainder of the expenses and charge of purchasing the land, building and erecting the said court-house and prison, it shall and may be lawful for the commissioners and assessors of said county, or a majority of them, to assess and levy so much money as the said Trustees, or any four of them, shall judge necessary for paying the remainder aforesaid, of purchasing the land, and finishing the said court-house and prison, and they are hereby required so to do.

Commissioners to levy the necessary money by tax.

Passed 20th March, 1780.—Recorded in Law Book vol. I. page 873.

## CHAPTER DCCCXCIII.

*An ACT to repeal divers acts of Assembly of this commonwealth, herein after mentioned, for preventing forestalling and regrating, and for the encouragement of fair dealing; and an act, entitled An Act to permit the making of whiskey and other spirits from rye, barley, or the malt made thereof, under certain restrictions, therein mentioned; and to prohibit the distilling any whiskey or other spirits from any other grain, meal, malt or flour. (g)*

Passed 22d March, 1780.—Recorded in Law Book vol. I. page 384.

(g) This act merely repealed the 845; and the act, chap. 834, was re-peceding acts, chap. 768, 786, 805, repealed, by chap. 2196.



# A C T S

OF THE

## General Assembly of Pennsylvania.

Passed at a Session, which commenced May 10th, 1780,  
and ended June 1st, 1780.

1780.

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JOSEPH REED, PRESIDENT OF THE EXECUTIVE COUNCIL.  
JOHN BAYARD, SPEAKER OF THE GENERAL ASSEMBLY.

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### CHAPTER DCCCXCIX.

*A further SUPPLEMENT to an act, entitled An act for regulating and continuing the nightly watch; enlightening the streets, lanes and alleys in the city of Philadelphia, and for other purposes therein mentioned; and to an act which is a supplement thereto, passed in the year of our Lord one thousand seven hundred and seventy-six.*

[See the original act, chap. 636, ante. pa. 350,] and chap. 717.

\*chap. 635.

WHEREAS by an act, as a further supplement to the aforesaid acts of General Assembly, passed the fifth day of April in the year of our Lord one thousand seven hundred and seventy-nine;\* by reason of the increase of watchmen and workmen's wages, excessive high price of oil and materials, it was found expedient and necessary that further provision should be made to enable the Wardens and Assessors of the city of Philadelphia to raise and levy an additional tax, not exceeding six pence in the pound, on the inhabitants, and on all the estates, real and personal, and to authorize their treasurer to receive the rents and income of the market-houses, ferries, wharves and public landing places, within the bounds and limits of the said city, to the end, the difficulties under which the Wardens then laboured might be in some measure removed, and the nightly watch, so necessary, might be kept up and continued: And as the said recited act expires with the present sitting of the General Assembly, the same difficulties would again occur: For remedy whereof,

Power of the Wardens to

II. *Be it enacted, and it is hereby enacted,* That from and after the passing of this act, it shall and may be lawful for the Wardens of the

said city to let or demise the market houses, ferries, wharves, and public landing places; and they, with the Assessors of the said city, to raise and levy an additional rate, not exceeding six pence in the pound, on the inhabitants, and on all estates real and personal, and taxables within the city of Philadelphia; to be levied and collected in the same manner, by the same persons, and for the same uses, as directed in and by two several acts of General Assembly, the one passed the ninth day of March in the year of our Lord one thousand seven hundred and seventy-one, and the other passed the sixth day of April, in the year of our Lord one thousand seven hundred and seventy-six, for regulating and continuing the nightly watch, enlightening the streets, lanes and alleys of the city of Philadelphia, and for other purposes therein mentioned, over and above the rates and sums of money thereby authorized to be raised, levied and collected; and to authorize their Treasurer to receive the rents of the market houses, ferries, wharves and public landing places, and all other the incomes, fines, forfeitures and emoluments, which were formerly received by the treasurer of the Mayor and Commonalty of the city of Philadelphia.

1780.

let and  
assess.

III. *And be it enacted*, That the clerk of the market, for the time being, shall collect the rents of the market houses, stalls and stands in the market places, as they become due, quarterly and in arrear, and after deducting the costs and charges of repair, (to be allowed of by the said Wardens) and his accustomed fees for collecting, shall pay the overplus, together with the monies already collected for rent, and in his hands, to the treasurer of the Wardens and Assessors for the time being (whose receipt, which he is hereby required to give, shall be a sufficient discharge for any sum of money so paid) under such penalty as the City Court of the city of Philadelphia shall judge proper to inflict.

Duty of the  
Clerk of the  
market.

IV. *And be it further enacted*, That the owners and occupiers of the several ferries, wharves and public landing places, within the said city, shall from time to time pay their respective rents, as they become due, to the treasurer of the Wardens and Assessors of the city of Philadelphia, for the time being (whose receipt, which he is hereby required to give, shall be a sufficient discharge to him or them for the sum of money so paid) under the penalty of treble the amount of the said rents for every neglect or refusal.

Penalty on  
persons ne-  
glecting to  
pay rent.

V. *And be it further enacted*, That every other person who shall have or receive, or get into his custody or possession any monies, in virtue of this act, and neglect or refuse to pay the same to the Treasurer of the Wardens and Assessors, within ten days after the same shall come into his custody or possession, every such person shall, for every neglect or refusal, forfeit and pay treble the amount of such sum or sums of money so by him collected and received; and the said treasurer is hereby required to give receipt for the monies so by him received, whose receipt shall be a sufficient discharge to the persons paying the same.

Penalty on  
persons re-  
ceiving mo-  
ney by this  
act, and not  
paying in the  
same.

VI. *And be it further enacted*, That the monies which shall be received by the treasurer of the Wardens and Assessors aforesaid, by virtue of this act, and the act to which this is a supplement, shall be disposed of by the Wardens, or a majority of them, and applied to

Application  
of the monies  
to be receiv-  
ed.



1780. the same uses and purposes, as mentioned and specified in an act of General Assembly, passed the ninth day of March, in the year of our Lord one thousand seven hundred and seventy-one, entitled *An act for regulating and continuing the nightly watch, enlightening the streets, lanes and alleys of the city of Philadelphia, and for other purposes therein mentioned.\**

\* Chap. 636.

VII. *And be it further enacted,* That the Wardens of the city of Philadelphia, for the time being, are hereby empowered to purchase a lot of ground on the north side of Sassafras-street, adjoining the public wharf at the end of the said street, on the river Delaware, in the said city, and to take a deed or deeds for the same in their names, as Wardens, for the use of the city of Philadelphia, to be annexed to, and made use of, as a public wharf, at the end of the said street, for such estate and estates, term or time, as the same can or may be legally granted and conveyed.

[Obsolete.]

[VIII. *Provided always, and be it enacted,* That nothing in this act shall extend, or be construed to extend, to the estate and interest formerly held by the Corporation of the city of Philadelphia, usually called the middle ferry on Schuylkill, for the space of one year, from the first day of May, one thousand seven hundred and eighty, to the first day of May, one thousand seven hundred and eighty-one, unless the Wardens of the said city shall undertake and engage with the President or Vice-President in council, to keep and maintain, at their own expense, the bridge now erected over Schuylkill, in good repair, for the passage of men, horses and carriages, during the said term.

[Obsolete.]

IX. *And provided also,* That nothing herein contained shall extend to the annulling or making void any contract or engagement, made by the authority of the Supreme Executive Council, with the Quarter-Master General of the United States, for the passage of men, horses or carriages, in the immediate service of the United States.]

Passed 30th May, 1780.—Recorded in Law Book vol. I, page 393.

# ACTS

OF THE

## General Assembly of Pennsylvania,

Passed at a Session which commenced the 1st and ended  
the 23d of September, 1780.

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JOSEPH REED, PRESIDENT OF THE EXECUTIVE COUNCIL.  
JOHN BAYARD, SPEAKER OF THE GENERAL ASSEMBLY.

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1778.

### CHAPTER DCCCCVIII.

*An ACT to alter and amend an act, entitled An Act for the effectual suppression of public auctions and vendues, and to prohibit male persons, capable of bearing arms, from being hawkers and pedlars.*

**WHEREAS** it appears to be necessary, in the present situation of the trade and commerce of this state, that the sale of goods at public vendue should be enlarged and extended.

**II.** *Be it therefore enacted, and it is hereby enacted,* That, from and after the publication of this act, it shall and may be lawful for the President or Vice-President in Council to appoint and licence three auctioneers, one for the city of Philadelphia, one for the Northern-Liberties, and one for the district of Southwark, who shall continue for and during the will and pleasure of the said President and Council, and shall give bond to the President and his successors, with two sufficient sureties, in the sum of twenty thousand pounds, for the faithful discharge of their duties, and for well and truly performing the terms and payments in and by this act directed and required.

President and council to appoint three auctioneers, who are to give bond.

**III.** *And be it further enacted,* That the said auctioneers, and no other, shall, from and after the publication of this act, have full power and authority to set up and expose to sale, by public outcry and vendue, all and any houses, lands, goods, wares and merchandizes, and property whatsoever, negroes and mulatto slaves excepted, rendering and paying to the State Treasurer, for the use of the commonwealth, one *per centum* of the gross amount of the sale

Sales admitted by public auction.



1780. so by him or them made as aforesaid, in manner following: that is to say, that each and every of the said auctioneers shall, once in every three months, render an account upon oath to the said Treasurer (which oath he is hereby empowered to administer, and is directed to file the said account with the said oath in his office) of all the effects and property by him or them sold at any time before the said time of rendering the same account, and since his last settlement, and shall then immediately pay to the same Treasurer the full amount of the said one pound in the hundred pounds upon the same account; and upon any failure in rendering the same account upon oath, or of payment of the said sum of one *per centum*, any auctioneer so failing or neglecting shall be discharged from his place, and the said bond put immediately in suit. And if any person or persons, other than the said auctioneers, shall be found selling or disposing of any lands, tenements, goods, wares, merchandizes, or property whatsoever, within the city of Philadelphia, the Northern Liberties, or the district of Southwark, except as herein after is excepted, by way of vendue or auction, such person or persons, so offending, and being thereof legally convicted, shall, for every such offence, forfeit the sum of twenty thousand pounds, to the use of the poor of the city, liberties or district, where such offence shall be committed. And moreover, it shall and may be lawful for any Justice of the Peace of the said city, liberties or district, respectively, upon his own view, or on the testimony and information of one or more credible witnesses to him given, of any person selling lands, tenements, goods, wares, merchandize, or other property whatever, by way of vendue or auction as aforesaid, except as by this act is excepted, within the said city, district or liberties, to cause such person or persons so offending to be apprehended, and may oblige him, her or them, to find sureties for his, her or their good behaviour, and appearance at the next Court of Quarter Sessions of the Peace to be held for the said city, liberties or district respectively. *And it is further declared, That if the party so bound over shall, during the continuance of his, her and their recognizances, presume again to sell or expose to sale, by way of vendue as aforesaid, any lands, tenements, goods, wares, merchandize, or other property whatsoever, within the said city, liberties or district, such selling or exposing to sale shall be deemed, and is hereby declared to be a breach of the said recognizance.*

Auctioneers shall pay one *per cent.* into the state treasury once a quarter.

Penalty for neglect.

Penalty on selling by auction without a licence.

Proviso.  
[Ante. pa.  
179.]

IV. *Provided always, and it is hereby further enacted; That nothing herein contained shall extend or be construed to extend to hinder any lawful executor or executors, administrator or administrators, to expose to sale, by way of public auction, vendue or otherwise, any lands, tenements, goods or chattels of their respective testators or intestates, or to hinder any Sheriff, Constable, Lieutenant or Sub-Lieutenant, or other officer, to sell and dispose of, by way of vendue, any lands, tenements, goods or chattels, taken in execution, and liable to be sold by order of law; or to hinder any person or persons from selling or exposing to sale, by way of vendue, any goods or chattels of any kind whatsoever, taken and distrained for rent in arrear; but that all and every such person or per-*

sons may do therein as they might have done, any prohibition in this or any former law contained to the contrary notwithstanding. 1780.

V. And whereas the crime of horse stealing is become so frequent in this and the neighbouring states, as to render every precaution and remedy necessary and proper.

VI. *Be it therefore enacted*, That each and every of the said auctioneers shall keep a register of the horses, mares or geldings, by them respectively exposed to sale, in their respective offices, wherein shall, before sale, be inserted the colour, size, and principal marks, natural and artificial, of every horse, mare or gelding, by him exposed to sale, and the age, as the intended vender shall declare it, the name or names of the persons offering the same for sale, and after the sale, the name of the person to whom the same is sold, which said register is hereby declared to be so far a public record, as that every person shall be entitled to a view thereof, and a copy, if demanded, paying for such inspection the sum of two dollars, and for such copy the sum of six dollars, and shall be read in evidence on any trial respecting the property of such horse, mare or gelding.

Auctioneer shall keep a register of horses sold.

Register to be a public record subject to inspection.

VII. *And be it further enacted*, That no sale of any stolen horse, mare or gelding, by virtue of this act, shall be deemed a public sale in market overt, so as to change the property thereof.

VIII. [*And be it further enacted*, That no vendue shall be held by the said auctioneers, or any of them, out of the city or district for which he or they shall be appointed, and that their fees or recompence for selling at public auction, collecting the money, and paying over the same, without loss or waste, shall be as follows; for household goods, cattle and live stock, five *per centum*; for horses two and a half *per centum*; for ships, houses and lands, an half *per centum*; for rum, sugar, tea, coffee, and all other groceries, two and an half *per centum*; for European and American manufactures, in such lots or proportions as are usually sold in wholesale stores, five *per centum*.]

[Repeated, and part supplied, see note to this act.]

Passed 23d September, 1780.—Recorded in Law Book vol. I. page 402. (h)

(h) The original act was passed on the 26th day of November, 1779 (chap. 859,) and expired by its own limitation, at the end of the war. It provided, that no goods, wares or merchandizes, or other property whatsoever (except &c.) should be sold by auction, in any place within the territories of the commonwealth, by any person whatever, upon forfeiture of a sum equal to the value of the goods, &c. recoverable by action of debt, or by indictment, one half to the informer, the other half to the Overseers of the poor of the place, &c. except sales by any Sheriff, or other officer, in the execution of his office, who was not specially restricted by that act; and except sales of real and personal estate, by Executors and Administrators, *bona fide* the property of Testator or Intestate, and sales of lands, houses and other real estate, and sales of household goods, (which had been in

wear and use) horses, cattle, and live stock, being, *bona fide*, the property of resident house-keepers, actually removing from any township or district of this state, to another, or out of the state.

The restraint introduced by this act was grounded, as stated in the preamble, on the embarrassed state of commerce, occasioned by the war between the United States and Great Britain, and because, as was alleged, the practice of selling goods by auction, or vendue, had been made use of as a device for enhancing the price of commodities, and of depreciating the bills of credit of this state and of the United States.

The act then provided, that all sales by auction, within the city, and within two miles of the Court House, of lands and other real estate, and of all other property permitted by the act to be sold by auction, other than sales by Sheriffs, &c. (as aforesaid) should be



1780. performed by a sole auctioneer, to be appointed for that purpose by the executive council, to be styled the *Auctioneer of the city of Philadelphia*; any other person selling by auction to forfeit the value, &c. as aforesaid.

The security to be given, and the duties of the auctioneer were prescribed, and the commissions to be received by him.

The marshal of the admiralty was prohibited from selling by auction, except ships and perishable goods. But this section was repealed by the 10th section of an act passed September 22d, 1780, "a supplement to the act entitled "an act for regulating and establishing Admiralty Jurisdiction," (chap. 904.)

The act then repealed the act for regulating pedlars, vendues, &c. (chap. 308 ante. pa. 179) so far as the same related to vendues, and also the act to prohibit the sale of goods, wares, and merchandizes by public vendue, and to regulate pedlars and hawkers in this state, passed June 19th 1777, (chap. 750.)

The act is printed at large in *M<sup>c</sup>Kean's* edition, page 245.

By chap. 872 passed March 2d, 1780, (an act to alter and amend the act in the text, printed at large in *M<sup>c</sup>Kean's* edition, pa. 294.) Goods and merchandizes damaged, and in a perishable condition, and shipwrecked goods were permitted to be sold at auction, notwithstanding the act of November 1779. But before the auctioneer could proceed to sell, he was to be furnished with the licence of President, or Vice-President in Council, authorising such sale, the goods, &c. to be specified and particularized, and the licence to be grounded on the report, on oath or affirmation of persons to be appointed for that purpose, &c. Chap. 308, regulating auctions, and for the appointment of a vendue-master in the city of Philadelphia, is printed at large in Galloway's edition, pa. 154.

Hawkers and pedlars are regulated by the act of March 30th, 1784, (post. chap. 1079,) to which a supplement was passed March 28th, 1799, (post. chap. 2027.)

By the act in the text sales by auction are enlarged and extended.

By a supplement to the act in the text, passed April 13th 1782. (post. chap. 964,) the auctioneers are allowed for their expense and trouble in selling any property at public auction, collecting the money, and paying over the same without loss, viz. for houses, lands, tenements or real estates, and for ships or vessels, an half *per centum*;

for wine, rum, sugar, coffee, tea, and all other groceries, sold by the pipe, hogshead, tierce, barrel, bag, chest, or box one and a quarter *per centum*; and for horses, cattle, and all other goods, wares and merchandizes, not before enumerated, or sold in smaller quantities than before mentioned, two and an half *per centum*; but persons may contract with the auctioneers to pay them for their services, any less reward, which they may be willing to accept. The auctioneers to demand and receive an additional one *per centum* on the gross amount of sales, for the use of the commonwealth, over and above the sum mentioned in the act in the text, except for ships or vessels, houses and lots; and pay the same to the Treasurer in the manner directed by the act in the text, and the bonds given for the faithful performance of their duties required by the said act, are declared to be a security for the payment of the one *per centum* imposed by the supplement; and the revenue arising from auctions, is appropriated to the support of government, and the administration of justice within this commonwealth.

By an act passed December 9th, 1783, (post. chap. 1052) entitled "an act to revive and continue in force the acts of Assembly regulating sales by public auction, and for other purposes therein mentioned." The act in the text, so far as the same is not altered or supplied by the supplement of April 1782, and the present act of December 1783, and also the supplement of April 1782, are made perpetual; and a penalty of £ 500 is to be forfeited by any auctioneer, directly, or indirectly, purchasing for his own use, any goods, &c. at his auction; one half for the use of the state, the other to the informer, and also rendered incapable thereafter to serve in any post of honour or profit in the state. The auctioneers to account once in three months, or oftener if required, and on failure or neglect, to be discharged from his place, and his bond put in suit. The old auctioneers continued by this act, until the end of the next session, or until the Legislature by their resolution, should otherwise direct, and so much of the act in the text hereby altered or supplied, is repealed.

By this act the appointment of auctioneers was taken from the Executive Council; but it was revested by the act of April 4th, 1785, (chap. 1147.)

By a supplement to the several acts of Assembly respecting public auctions and auctioneers, passed March 19th, 1789, (post. chap. 1389) Provision is made for the appointing an additional auctioneer for the township of *Moya-*

mensing, and it is therein declared, that no duty should be paid on the sale of any real estate, nor on the sale of any household furniture and wearing apparel, which has actually been in use, nor on any ship or vessel, the property of any citizen of the United States; and the provisions of the vendue laws were extended to all places within two miles of the state-house of Philadelphia.

And, by an additional supplement, passed March 27th, 1790. (post. chap. 1483.) Provision was made for appointing two additional auctioneers; one for the City, and one for the Northern Liberties; to give bond in £.2000 each, conditioned for the faithful discharge of their and every of their respective duties, and for well and truly performing the terms and payments, by the several acts directed and required; and to possess like powers, and be subject to the like penalties, as former auctioneers.

The duties to be paid to the Treasury, on sales at auction, are reduced to one *per centum*.

And by a further supplement, passed February 26th, 1791. (post. chap. 1518.) The restriction that each auctioneer should be confined to his own district, is taken off.

By the 11th section of an act passed April 5th, 1797, enjoining certain duties on the Comptroller-general, Register-general, and State Treasurer. The auctioneers of the city of Philadelphia, Northern Liberties, and Southwark, shall settle their accounts for duties received by them for the use of the state, quarter yearly, and pay the amount found due immediately into the state Treasury; and on refusal or neglect to discharge the same within one month after the expiration of such quarter, the commission of such auctioneer shall cease, determine, and become absolutely void, and another person be appointed in his place, and the auctioneer and his sureties shall be proceeded against for the recovery of the amount so found due, &c.

Finally, by an act entitled "An Act to authorize the Governor to appoint and commission an auctioneer for the express and sole purpose of selling horses, cattle and carriages, within the city of Philadelphia," such auctioneer shall be appointed exclusively for that purpose; who shall keep a book, and register in the same the names of the sellers and purchasers of all horses and cattle, and shall pay the same duties, give the same security, and be liable to

the same penalties, as other auctioneers are under the existing laws. 1780.

In the case of *Dallas, Secretary, v. Chaloner's Executors*, it was held, that in an action of debt on an auctioneer's bond, brought by the state, for duties, the state is entitled to the whole of the arrearages, though accruing for more than three months.

It was contended, that the state was not entitled to recover more than the duties accruing during a term of three months; and that the judgment rendered on an official bond, must enure to the benefit of those, who shall prove themselves injured and entitled. That the Testator failing in his public payments, at the expiration of three months, ought to have been removed and sued; the lien of the state on the bond then ceased; and if she afterwards suffered, it was by her own *laches*.

By *M'Kear, C. J.* This is an action brought upon the official bond of a public auctioneer, to recover the amount of the duties payable to the state. It is true that the law directs auctioneers to be displaced, and their bonds to be put in suit, if they do not once in three months, pay the duties into the treasury, but there is no provision for annulling the bonds, or forfeiting the remedy of the state upon them, in case that direction should not be complied with. As to the delinquent himself, such a provision would have been absurd; and as to his sureties, it is enough to observe, that their case is not at present before the court; nor is the objection made with a view to their relief.

Let the judgment be entered in favour of the commonwealth for the amount of the duties, with interest from the time when the money ought to have been paid into the treasury. 3 Dallas, 500.

The condition of an auctioneer's bond, under the act of 27th March, 1790, is a security to the employers, whose property is sold at vendue, as well as to the public. *Lea, Executrix v. Tard, and Hazlehurst v. Dallas, Secretary.* 4 Dallas, 95.

Where several suits have been brought to the same term, on an auctioneer's bond, the penalty whereof has been paid into court before judgment, and proceedings stayed, the person first suing is entitled to be paid his whole demand, and the surplus shall be divided among the other suitors, *pro rata*. *M'Kear, Governor, v. Shannon & al.* March, 1808. Sup. Court, MSS. Reports—And see 4 Dallas, 106, (note 2.)



1780.

The appointment of auctioneers is now vested by the existing constitution, in the Governor

By the 8th section of the act of March 4th, 1807, (chap. 2757,) it is enacted, "That the Governor be and he is authorized and required to appropriate annually the amount of the duties on sales at auction, which shall be paid each year into the state treasury, in the purchasing of Bank or other profitable stock, as he may judge proper, until the stock so purchased shall amount to three hundred thousand dollars, which stock is pledged for the payment of the sum granted to the canal company by the seventh section of the said act, and the interest arising from the stock so purchased from time to time shall be

paid into the state treasury, subject to the disposition of the legislature: Provided always, that if the said canal shall not be completed within twenty years from the passing of the said act, the state shall not be considered as pledged for the payment of the aforesaid three hundred thousand dollars.

But this latter was repealed by an act passed March 20th, 1810, and in lieu of the provisions of the said 8th section, Bank stock was pledged, and the Governor authorized to sell so much thereof as will satisfy the demands which may be made under the said act, or to negotiate a loan for that purpose, if the sale of the stock should be injurious to the interests of the commonwealth.

# ACTS

OF THE

## General Assembly of Pennsylvania.

Passed at a Session which commenced February 6th, 1781,  
and ended April 10th, 1781.

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JOSEPH REED, PRESIDENT OF THE EXECUTIVE COUNCIL.

1781.

F. A. MUHLENBERG, SPEAKER OF THE GENERAL ASSEMBLY.

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### CHAPTER DCCCCXIX.

*A further SUPPLEMENT to the act, entitled An Act for making the river Schuylkill navigable, and for the preservation of the fish in the said river. \**

[\* See ante: chap. 465, and the notes thereto, pp. 235.]

WHEREAS several of the Commissioners nominated and appointed in and by the act of Assembly, passed on the twenty-sixth day of February, in the year of our Lord one thousand seven hundred seventy and three, entitled *A Supplement to the act, entitled An Act for making the river Schuylkill navigable, and for the preservation of the fish in the said river*, have, since the passing of the same, departed this life, removed from the neighbourhood of the said river, or engaged in other business, so that the regulations and provisions in the said act contained, to which this act is a further supplement, cannot now be properly carried into execution:

II. *Be it therefore enacted, and it is hereby enacted*, That David Rittenhouse, Owen Biddle, Mark Bird, Baltzer Gehr, Thomas Potts, David Thomas, Patrick Anderson, John Mear, Isaac Hews, Nathan Levering, George Douglass, John Heister and Christian Steer, shall be, and they are hereby, appointed Commissioners for clearing, scouring, and making the river Schuylkill navigable, and for putting in execution all and singular the purposes mentioned in the act passed the fourteenth day of March, in the year of our Lord one thousand seven hundred sixty and one, entitled *An Act for making the river Schuylkill navigable, and for the preservation of the fish in the said river*, or contained in the above recited supple-

Commissioners appointed for clearing the river, &c. and putting in execution the former acts.



1781.

To have the same powers, and to perform the same duties as former commissioners, &c.

The survivors of the former commissioners to deliver to the commissioners appointed by this act unappropriated money, books, papers, tools, &c.

Fine on persons taking fish, or driving the river with brush-nets, &c.

How to be recovered, and how applied.

Brush-nets, &c. may be removed or destroyed.

Fine on persons obstructing such removal.

Certain limitations and restrictions respecting the catching shad, &c.

[Repeated March 28th, 1785, chap. 1135, sect. 14.]

ment thereto; and that they, or a majority of them, or of the survivors of them, shall have, hold and exercise all and every the powers, authorities, jurisdictions, rights and privileges, given and granted in and by the said recited act to the Commissioners therein appointed, and shall be subject to the same duties, to all intents and purposes, as if they had been the Commissioners therein particularly appointed.

III. *And be it further enacted*, That the surviving commissioners appointed by the said recited act, entitled *A supplement to the act, entitled An act for making the river Schuylkill navigable, and for the preservation of the fish in the said river*, shall, and they are hereby enjoined and required, immediately after the passing of this act, to deliver over to the Commissioners herein before appointed, all and every the sum and sums of money by them, or either of them, collected or received, and remaining in their or either of their hands, unappropriated and unapplied to the purposes mentioned in the said recited act, together with all books, subscriptions and other papers, vouchers and accounts, and all tools and implements, which have been provided for opening and clearing the said river, and are or shall be in their or any of their custody, power or possession.

IV. And whereas it is represented to the legislature, that notwithstanding the good and wholesome regulations contained in divers acts of Assembly now in force, for the preservation of fish in the said river Schuylkill, great injury is done by a practice of driving the said river with brush-nets: For remedy whereof, *Be it further enacted*, That if any person or persons shall, from and after the publication of this act, take any fish whatsoever with brush-nets, or such like devices, or shall drive the said river with such nets, or in any manner make use of the same therein, he, she or they, so offending, being thereof convicted before any two Justices of the Peace in and for the county, where he, she or they shall be apprehended (which Justices are hereby authorized and empowered to hear, try and determine the same) shall forfeit for every such offence the sum of twenty pounds, one half thereof to be paid to the Overseers of the poor of the township, where such offender shall reside, for the use of the poor thereof, and the other half to the informer, and likewise pay the costs of prosecution; and, moreover, it shall and may be lawful to and for any person or persons whatsoever to remove or destroy any such brush-net, or other like device, found in any part of the said river; and that all and every person or persons who shall assault, hinder or obstruct any person in taking, removing or destroying any of the said brush-nets, or other like device, in any part of the river aforesaid, and shall be thereof convicted in manner aforesaid, shall forfeit and pay for every such offence fifty pounds, one moiety thereof to the use of the poor as aforesaid, and the other moiety to the use of the party so obstructed or aggrieved.

V. *Provided always, and be it further enacted*, That no person or persons shall draw any sein or net, for the purpose of catching shad, in that part of the river Schuylkill between the mouth thereof and the Lower Falls, five miles from the city of Philadelphia, after the twentieth day of May, or between said Falls and the Black Rock, near the mouth of French creek, after the twenty-fifth of said month, or in any part of the said Schuylkill river after the first day

of June, in every year, under the penalty of ten pounds for every such offence, to be recovered as aforesaid. 1781.

VI. *And be it further enacted*, That so much of the above re-cited supplementary act, as relates to the appointment of Commissioners, shall be, and the same is hereby repealed, made null, and void. Part of supplementary act repealed.

Passed 24th March, 1781.—Recorded in Law Book vol. I. page 417.

## CHAPTER DCCCCXX.

*An ACT for erecting part of the county of Westmoreland into a separate county.*

**WHEREAS** the inhabitants of that part of Westmoreland county, which lies west of the Monongahela river, have represented to the Assembly of this state the great hardships they lie under, from being so remote from the present seat of judicature and the public offices : For remedy whereof,

II. *Be it enacted, and it is hereby enacted*, That all that part of the state of Pennsylvania, west of the Monongahela river, and south of the Ohio, beginning at the junction of the said rivers ; thence up the Monongahela river aforesaid, to the line run by Mason and Dixon ; thence by the said line due west, to the end thereof ; and from thence the same course, to the end of five degrees of west longitude, to be computed from the river Delaware ; thence by a meridian line extended north, until the same shall intersect the Ohio river, and thence by the same to the place of beginning (the said lines, from the end of Mason and Dixon's line to the Ohio river, to be understood as to be hereafter ascertained by Commissioners now appointed, or to be appointed for that purpose) shall be, and the same is hereby declared to be, erected into a county, henceforth to be called Washington. Boundaries of the county.

III. *And be it further enacted*, That the inhabitants of the said county of Washington shall, at all times hereafter, have and enjoy all and singular the jurisdictions, powers, rights, liberties, and privileges whatsoever, which the inhabitants of any other county, within this state, do, may or ought to enjoy, by any charter of privileges, or the laws of this state, or by any other ways and means whatsoever. Rights, privileges, &c. of the inhabitants.

VI. *And be it further enacted*, That the Justices of the Supreme Court of this state shall have like powers, jurisdictions and authorities, within the said county of Washington, as by law they are vested with and entitled to in the other counties within this state ; and are hereby authorized and empowered, from time to time, to deliver the gaols of the said county of capital and other offenders, in like manner as they are authorized to do in the other counties of the state. Justices of the Supreme Court to have like powers, &c.

IX. *And be it further enacted*, [That when the persons elected for Justices of the Peace as aforesaid, or that shall be appointed by the President and Council,] have taken the oaths or affirmations required by the laws of this commonwealth, and received their commissions as directed in the constitution of this state, the said Justices, or any Justices to hold Courts of General Quarter Sessions, &c. [Altered by the constitution.]



1781. three of them, shall and may hold Courts of General Quarter Sessions of the Peace and Gaol Delivery, and county courts for holding of pleas; and shall have all and singular the powers, rights, jurisdictions and authorities, to all intents and purposes, as other Justices of the Courts of General Quarter Sessions, and Justices of the county courts for holding of pleas in the other counties in this state, may, can, or ought to have in their respective counties; which said courts shall sit and be held, for the said county of Washington, on the Tuesdays next preceding Westmoreland county courts, in every of the months of January, April, July and October, at the house of David Hoge aforesaid, in the said county of Washington, until a court-house shall be built; and when the same is built and erected in the county aforesaid, the said several courts shall then be holden and kept at the said court-house, on the days before mentioned.

Their power.

Time and place of holding courts.

Commissioners to purchase a lot to build a court-house and prison upon.

X. *And be it further enacted*, That it shall and may be lawful to and for James Edgar, Hugh Scott, Van Swearingham, Daniel Lite and John Armstrong, or any three of them, to take up or purchase, and take assurance to them, and their heirs, of a piece of land, situated in some convenient place in the said county, to be approved of by the President and Supreme Executive Council, in trust and for the use of the inhabitants of the said county, and thereupon to erect and build a court-house and prison, sufficient to accommodate the public service of the said county.

Passed 28th March, 1781.—Recorded in Law Book vol. I. page 418. (i)

(i) The sections omitted in this act, are repealed or obsolete. Sect. 4 and 5, authorized the trustees named in the act to divide the county into townships or districts, for the purposes of the ensuing election, and the number of representatives to be chosen and a member of the Executive Council, and the place of holding the election, were prescribed. They are of course supplied by the existing constitution, and subsequent laws founded thereon.

Sect. 7 and 8, provided for the election and appointment of Justices of the peace. Sect. 11 and 12 provided for the expenses of the public buildings. Sect. 13 for the continuance of suits commenced in the original county. Sect. 14, 15 and 16 provided for the appointment of a collector of excise, &c. Sect. 17, Sheriff and Coroner of Westmoreland county to officiate until a Sheriff, &c. should be chosen in the new county. Sect. 18, directed the amount of the security to be given by the Sheriff and Treasurer, and is supplied by subsequent general acts.

Certain parts of Westmoreland and Washington counties erected into the county of Allegheny, September 24th, 1788, (post. chap. 1348.)

An additional part of Washington, annexed to Allegheny county, September 17th, 1789, (post. chap. 1424.) Another part of Washington county erected

into the county of Greene, February 9th, 1796, (post. chap. 1859.)

Part of Allegheny and Washington counties erected into the county of Beaver, March 12th, 1800, (post. chap. 2119, sect. 1.)

The line between Washington and Greene counties altered, January 22d, 1802, (post. chap. 2212.)

By the last enumeration, the county of Washington contains five thousand seven hundred and sixteen taxables; and connected with the county of Greene, seven thousand six hundred and twenty seven taxables; and by the act of March 21st, 1803, apportioning the representation in pursuance thereof, this county sends four members to the House of Representatives, and, with the county of Greene, two members to the Senate.

Washington county was divided into six election districts by act of September 20th, 1787, (post. chap. 1299.) Boundary between the 5th and 3d districts altered, and the place of holding elections in the 5th district changed, by act of September 26th, 1788, (post. chap. 1349.) And the place of holding the elections in the second district changed, by act of March 8th, 1790, (post. chap. 1480.)

An additional district established by act of April 6th, 1791, (post. chap. 1538.)

The fifth and sixth election districts united, to be called the fifth district, and the place of holding the elections therein, fixed, by act of March 8th, 1792, (post. chap. 1621.)

A new district, to be called the sixth district, established, by act of April 8th, 1794, (post. chap. 1723.)

A new district erected, April 10th, 1799, (post. chap. 2064.)

Brunswick and Stevenson's districts established, and an addition made to the sixth district, by act of Dec'r 1st, 1800, (post. chap. 2143.)

The bounds of the ninth, or Stevenson's district enlarged, Jan'y 8th, 1805, (post. chap. 2515.)

A district, called the 10th district, established March 31st, 1806, (post. chap. 2715, sect. 8.)

Mountpleasant township erected into a district, March 28th, 1808, (post. chap. 2972, sect. 6,) and Buffaloe township erected into a district, (same act, sect. 26.)

Places of holding elections in the fifth and tenth districts altered by act of April 4th, 1809, sect. 32, 33; and the place of holding the elections in Hill's districts altered by act of March 20th, 1810, sect. 3.

By the judiciary act of Feb'y 24th, 1806, the counties of Beaver, Allegheny, Washington, Fayette and Greene, compose the fifth district. The courts are held as follows; the term continuing one week; Beaver, 1st Monday in January, August and November, and last Monday in March; in Allegheny, the Mondays following; in Fayette the Mondays succeeding the courts in Allegheny; in Greene, the Mondays succeeding the courts in Fayette; and in Washington, the Mondays succeeding the courts in Greene.

See *Washington County*, in the General Index to this edition.

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## CHAPTER DCCCCXXIV.

*An ACT directing the mode of adjusting and settling the payment of debts and contracts entered into and made between the first day of January, one thousand seven hundred and seventy-seven, and the first day of March, one thousand seven hundred and eighty-one, and for other purposes therein mentioned.*

**WHEREAS** the good people of this state labour under many inconveniences, for want of some rule, whereby to settle and adjust the payment of debts and contracts entered into and made, between the first day of January, one thousand seven hundred and seventy-seven, and the first day of March, one thousand seven hundred and eighty-one, many of which are yet due and unsatisfied; and it seems just and reasonable that some rule should be by law established for liquidating and adjusting the same, so as to do justice as well to the debtors as creditors:

**II.** *Be it therefore enacted and it is hereby enacted,* That from and after the passing of this act, all debts and contracts, of what nature or kind soever, entered into or made within the period aforesaid, now remaining due and unfulfilled, for the payment of money, shall be liquidated, settled and adjusted, agreeable to a scale of depreciation herein after mentioned and contained, that is to say; by reducing the amount of all such debts and contracts to the true value in specie, at the days or times the same were incurred or entered into; and upon payment of the said value so found in specie, or other money equivalent, the debtors or contractors shall be for ever discharged of and from the said debts or contracts, any law, custom or usage, to the contrary in any wise notwithstanding.

Certain debts and contracts to be settled according to a scale of depreciation.

The mode, &c.

**III.** *And be it further enacted,* That the proviso clause in the suspension act of the thirty-first day of May, one thousand seven

Part of certain acts repealed.



1781. hundred and eighty,\* continued by a supplement of the twenty-second day of September, one thousand seven hundred and eighty,† and also the proviso clause of the suspension act of the twentieth day of February, one thousand seven hundred and eighty-one,‡ so far as the same take off or restrain the enacting clause in the said laws, in case of payment of any debt or demand whereupon any distress may be made, or upon which any action or suit shall be commenced in any court of law within this state, shall be, and the same are hereby, repealed, any thing in the said proviso clauses to the contrary notwithstanding.

Mode of  
settlement  
in cases  
where the  
parties can  
not agree.

IV. *And be it further enacted,* That in all cases between debtors and creditors, for debts or demands due and payable, or incurred, on or before the first day of March, one thousand seven hundred and eighty-one, where the parties cannot otherwise agree, it shall and may be lawful for any court of law, and for any Justice of the Peace (in cases of debts and demands cognizable before one Justice of the Peace) upon the prayer of either party, to appoint three or more auditors, in presence of the parties, if they will upon reasonable notice attend, otherwise, upon proof of such notice to the Court or Justice, to appoint the said auditors *ex parte*, in manner following, to wit; by naming a treble number, and each of the parties to strike out one alternately, until the number to be appointed only remain in nomination. And in case of non-attendance of either party, the Clerk of such court, or the Justice of the Peace, shall strike for the absent party; which auditors, so appointed, shall have full power and authority, upon notice to the parties, to meet, hear and examine the parties, upon interrogatories, and also such witnesses, papers and proofs of the parties, as shall be to them adduced; and thereupon liquidate, adjust and settle all debts or demands, and other controversies, subsisting between the parties, agreeable to the directions of this act, where that can be done; but in cases where the act shall not apply, then to settle and adjust the same according to equity and good conscience, upon due consideration had of the nature and circumstances of the case; but the said auditors shall not have any power or authority in cases where partial payments have been made in money then current, to reduce such payment. And the said auditors, where any tender has been made before the first day of March, one thousand seven hundred and eighty-one, in money current, shall not allow the creditor more than the value of his debt, reduced to specie at the time when such tender was made; and where it shall appear to the said auditors that any debtor, who had willingly received bills of credit made current in payment of his debts, and was also prepared and ready to pay the sum due by him in such money, but was prevented by the creditor absconding, concealing his bonds or papers, or secretly assigning them, or such like evasions, in all such cases the debtor shall have the benefit of a legal tender; and the said auditors, upon settling and adjusting all such debts or demands, shall make report to the Court or Justice, as the case may require; which report shall be of the same force and effect as a verdict of a jury in the case, and the Court or Justice shall enter judgment on such report.

V. *And be it further enacted*, That the following scale of depreciation, shall be the rule to determine the value of the several debts, contracts and demands, in this act mentioned, compared with silver and gold. 1781.   
 Scale of depreciation.

One thousand seven hundred and seventy-seven.

January,	One and an half.	July,	Three.
February,	One and an half.	August,	Three.
March,	Two.	September,	Three.
April,	Two and an half.	October,	Three.
May,	Two and an half.	November,	Three.
June,	Two and an half.	December,	Four.

One thousand seven hundred and seventy-eight.

January,	Four.	July,	Four.
February,	Five.	August,	Five.
March,	Five.	September,	Five.
April,	Six.	October,	Five.
May,	Five.	November,	Six.
June,	Four.	December,	Six.

One thousand seven hundred and seventy-nine.

January,	Eight.	July,	Nineteen.
February,	Ten.	August,	Twenty.
March,	Ten and an half.	September,	Twenty-four.
April,	Seventeen.	October,	Thirty.
May,	Twenty-four.	November,	Thirty-eight and an half.
June,	Twenty.	December,	Forty-one and an half.

One thousand seven hundred and eighty.

January,	Forty and an half.	July,	Sixty-four and an half.
February,	Forty-seven and an half.	August,	Seventy.
March,	Sixty-one and an half.	September,	Seventy-two.
April,	Sixty-one and an half.	October,	Seventy-three.
May,	Fifty-nine.	November,	Seventy-four.
June,	Sixty-one and an half.	December,	Seventy-five.

One thousand seven hundred and eighty-one.

January,	Seventy-five.	February,	Seventy-five.
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VI. *And be it further enacted*, That the act, entitled *A Supplement to an act for the more easy recovery of small debts*,\* passed on the ninth day of October, one thousand seven hundred and seventy-nine, be, and the same is hereby repealed and made void. Certain act repealed.   
 \* Chap. 951.

VII. *And be it further enacted*, That the act, entitled *An Act for limitation of actions*,† passed the twenty-seventh day of March, one thousand seven hundred and thirteen, shall not run or operate during the time the courts of justice were shut in this state, nor during the time of any suspension act of this state in any Act of limitation suspended during, &c.   
 † Chap. 196, ante. p. 70.



1781. action or distress prohibited to be made or brought by such act, under the penalty of taking depreciated money in full payment.

Passed 3d April, 1781.—Recorded in Law Book vol. I. page 422. (*k*)

(*k*) The act of December 18th, 1780, (chap. 909) provided for settling the depreciation of the pay of the Pennsylvania line and state navy; and for issuing depreciation certificates for the amount. These certificates were declared to be receivable in payment for confiscated estates, and unlocated lands. Provision was made to prevent transfers of the certificates of privates, unless attested by the commanding officer of the regiment; and a scale of depreciation was established for making this settlement. The settlement was completed, and all the certificates issued in consequence of it, have, at subsequent periods, been redeemed or paid. For other acts relating to the compensation of the army, &c. see chap. 869, 930, 944, 960, 996, 1013, 1155, 1180, 1199, 1208, 1635, 1642, 1764. (Note to chap. 909. former edition.)

By chap. 934, (post.) the tender laws are repealed; but an equitable mode is established for settling the accounts of agents, &c. who have received monies on account of their constituents, while those laws were in operation. And, by the act of December 23d, 1784, (chap. 1112, now obsolete) it was provided, that where judgment had been obtained for a debt payable before the 1st of January, 1777, the court should ascertain the sum due, and give judgment for the whole, with principal and interest, with stay of execution, as to one third part, &c. for one year, as to another third part, &c. for two years, and as to the remaining third part, for three years, from and after passing the act; and with respect to future judgments, the stay of execution was to be regulated in equal third parts, payable at three equal periods from the entering the judgment, &c. Several executions might be issued for the instalments, at the respective specified times of payment, without writs of *scire facias* to revive the judgments. Executions in the hands of Sheriffs, founded on judgments for debts due before the first of January, 1777, were stayed for one year, upon payment of interest and costs, and giving security that the property (if any) taken in execution should then be forthcoming. Assignees of the estates of debtors, in trust for creditors, whose debts were contracted, and the assignment made before January 1st, 1777, were prevented from making sale, within three years after the act passed,

without the consent of the assignor, expressed in writing, or, by his being a witness to the Deeds of Conveyance. Debts due to the State, or the United States not to be affected by that act. There was an exception also as to debtors not seized in their own right of a sufficient real estate to satisfy their debts beyond all reprises, and who were about to depart the state without securing the same; and as to the case of debt due before the 4th of July, 1776, by any citizen of this State to any of the subjects of Great Britain. The benefit of that act was also extended to debtors of the late corporation of Philadelphia, by an act passed April 8th, 1785. (chap. 1154) (note to chap. 1112, former edition.)

A previous act, passed March 12th, 1783, (chap. 997,) had provided that no execution should issue for the principal due on any contract entered into before the 1st of January, 1777, (except debts due to the state,) until one year after the 21st of June, 1783. That trustees of lands or tenements assigned for the benefit of creditors before the 1st January, 1777, should not sell before the 21st June, 1784, and that no statute of limitation should run as to the time between the 1st January, 1776, and the 21st June, 1784, upon debts or contracts made before the 1st January, 1776. (Note to chap. 997, former edition.)

For a general view of the order and effect of the tender laws, see *Johnson v. Hocker*, 1. Dallas 406.

In *Cooper v. Coates*, on a rule to shew cause, why auditors should not be appointed, under the act of Assembly, the defendant's deposition was read, wherein he swore, that no question of depreciation could arise in this cause.

*By the Court.* The words (sect. 4,) are so very general and comprehensive, that, if the spirit and intention of the law, expressed in the preamble and other sections, were not to be considered, they would include every case arising between the periods mentioned in the act. But it is inconsistent with the constitution, and with justice, that the trial by jury should be taken away in this manner; and therefore the courts of justice have always determined, that auditors shall be appointed only where there is a dispute about the depreciation. Rule discharged. 1 Dallas, 248.

The court will not appoint auditors under the depreciation act, unless it appears that the contract arose between

January 1st, 1777, and 1st March, 1781.  
*Robb v. M'Cune*, MSS. Rep. Sup. Court.  
 April 1794.

In debt on bond, dated January 9th, 1779, for payment of £.80 on the 10th January, 1780, with lawful interest.

The defendant admitted himself to be liable to plaintiff for the sum expressed in the condition of the bond, rating the same at 8 for 1 according to the scale, with interest; but insisted the jury would estimate the debt in no other mode than that pointed out by the law.

The plaintiff contended that he was entitled to the nominal sum and interest, and offered to shew that the writing obligatory, on which the present suit was founded, was given in lieu of another obligation between the same parties, for a debt contracted long before the revolutionary war. He insisted, that it having been determined at *Easton*, that the depreciation act was binding on juries, and that they could not legally reduce partial payments, it would follow, that where that act did not apply, they had the power of "settling and adjusting the demand, according to equity and good conscience, upon due consideration had of the nature and circumstances of the case."

By the Court. This is not a necessary consequence of the decision cited. We sit here as a court of law, bound by certain known rules. The Legislature has not thought proper to clothe the jury with the power of determining in what cases the depreciation act does not apply; but has invested auditors with that authority, under the control of the court, and has armed them with

extraordinary powers to effectuate this end, by examining the parties on interrogatories. Where there is a dispute about depreciation, auditors alone are competent to give relief. Where no such dispute exists, the intervention of jury becomes indispensably necessary, and jurors are frequently called upon to decide cases wherein partial payments have been made in continental money. It would be obviously absurd, that in such instances, there should be any rule restrictive on auditors, but not binding on juries. We cannot go into the offered proofs, no authority being delegated to us for that purpose. Our decision rests as well on precedent, as principle. In a case at Lancaster, May 1783, between Benjamin Graff and John Witmer, and others, *M'Kean*, C. J. asserted the same doctrine.

Let the jury therefore be discharged, and the plaintiff apply for the nomination of auditors. Berks, *Nisi Prius*, September 1798. cor. *Yeates* and *Smith*, J. *Levan's Administrators v. Frey*.

The case at *Easton* was before the same Judges, September 1795, *Miller v. Leonard* and *Rush*. The only question was, whether the jury could legally reduce a partial payment made in September 1778, and it was there held that they could not. MSS. Rep. S. C. 2 Dallas, 237. And see *Ricup v. Bixter*, 2 Dallas, 132.

The same principle has been held in the case of a legacy devised in times of continental money. *Kennedy v. Kennedy*. Chester, May 1800, cor. *Shippen*, C. J. and *Yeates*, J.

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## CHAPTER DCCCCXXV.

*An Act to prevent the exportation of bread and flour not merchantable, and for repealing, at a certain time, all the laws heretofore made for that purpose.*

WHEREAS the regulations hitherto made for the inspection of bread and flour have not been quite effectual, and a variety of laws on the same subject tend to mislead the people.

I. Be it therefore enacted, and it is hereby enacted, That the act, entitled "*An Act to prevent the exportation of bread and flour not merchantable*,"\* passed the fourteenth day of October, one thousand seven hundred and thirty-three (excepting that part of it which repeals the act therein mentioned, and called an act to prevent the exportation of bread and flour not merchantable) and the act, entitled "*A Supplement to the act, entitled An Act to prevent the exportation of bread and flour not merchantable, and to the act which is an amendment thereto*,"† passed on the sixth day of October, one

Certain acts continued in force till October next; except, &c. [\*chap. 382.]

then repealed. [†chap. 384.]



1781. thousand seven hundred and seventy-nine, be and continue in force until the first day of October next; and that from and after that day the same acts be, and the same are hereby repealed.

II. *Provided always*, That the millers and bolters shall be allowed until the first day of October next to sell and dispose, for exportation, their flour in barrels of any other dimensions than those by the said acts, or any of them, prescribed.

III. And whereas it is the duty and interest of all governments to prevent fraud, and promote the interests of just and useful commerce :

IV. *Be it therefore enacted*, That from and after the said first day of October next, all flour casks shall be made of good seasoned materials, well made, and tightened with ten hoops, sufficiently nailed with four nails in each chine hoop, and three nails in each upper bilge hoop, and of the following dimensions, viz. the staves to be of the length of twenty seven inches, but of different diameters at the heads, according to their numbers, that is to say ; casks number one shall be of the diameter of eighteen inches at the head ; casks number two sixteen inches and an half ; and casks number three fifteen inches and an half ; that every miller or bolter of flour and baker of bread, for transportation out of this state, shall provide and have a distinguishable brand mark, which he shall cause to be entered with the Clerk of the Quarter Sessions for the county where he doth reside, together with his name and place of abode, under the penalty of the sum of five shillings for every day, during which he shall have exercised his said business of a miller, bolter or baker, without such entry ; for the making of which entries the said Clerk shall be entitled to the sum of one shilling each ; and that every miller or bolter of flour or baker of bread shall, with his said mark, brand each and every cask of flour or bread, before the same shall be removed from the place where the same was bolted or baked ; and every miller or bolter shall also brand every cask of flour, according to the respective diameters above specified, with the said numbers one, two or three, and with the weight respectively, under the penalty of one shilling and six-pence for every barrel of flour not hooped and nailed as aforesaid, and for every cask of flour or bread so removed, and not branded as aforesaid.

V. *And be it further enacted*, That the said millers or bolters shall put in the cask number one, the full quantity or weight of two hundred and twenty-four pounds of flour ; in the cask number two, the full quantity or weight of one hundred and ninety-six pounds : and in the cask numbered three, the full quantity or weight of one hundred and sixty-eight pounds of flour ; and that if any miller or bolter shall use or pack with flour any other casks, than of the three several sizes and dimensions aforesaid, he shall forfeit to the purchaser thereof the value or charge of such cask in his account ; and that if any miller or bolter shall pack any cask of the said sizes or dimensions, with a less quantity of flour than is above specified for the same, respectively, he shall forfeit the same casks and flour.

VI. *And be it further enacted*, That all wheat flour bolted, for sale and transportation out of the state, shall be made merchantable and of due fineness, without any mixture of coarser and other flour.

Flour casks  
how to be  
made, &c.

their dimen-  
sions.

Millers, bol-  
ters and ba-  
kers to pro-  
vide brand  
marks, and  
enter them  
with the  
Clerk of the  
Quarter  
Sessions,  
with their  
names, &c.

Penalty.

Quantity to  
be put in  
respective  
casks.

Penalty.

Flour to be  
of due fine-  
ness.

VII. *And be it further enacted,* That all casks wherein bread shall be packed, shall be weighed, and the tare marked thereon; and if any person shall put a false or wrong tare on any cask of bread, to the disadvantage of the purchaser, he or she shall forfeit, for every cask so falsely tared, the sum of five shillings; and the Inspectors, or their deputies, respectively, upon suspicion, or upon the request of the buyers, shall, and are hereby required to unpack any such cask of flour or bread as aforesaid; and if there shall be a lesser quantity of flour than is above directed, or if the cask or casks, wherein bread is packed, shall be found to weigh more than is marked thereon, then the miller, bolter or baker, as the case may be, shall pay the charges of unpacking and repacking, over and above the penalties aforesaid; but otherwise the said charges shall be paid by the Inspector, or by the purchaser, if the trial be made at his request.

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Casks of bread to be weighed, &amp;c.

Penalty.

Power of the Inspectors and their deputies, &amp;c.

VIII. *And be it further enacted,* That every baker of bread for exportation shall deliver, with the said bread, an invoice of the contents thereof, with his brand mark made thereon, together with his name signed thereto, under the penalty of forty shillings for every invoice delivered contrary hereto; and if any cask or casks of bread, upon trial, be found lighter than is set down in the invoice, such baker shall forfeit the bread and casks so falsely invoiced.

Bakers to deliver invoices with their brands, &amp;c.

IX. *And be it enacted,* That no cart, wain or waggon, shall be made use of, for the carrying or conveying of flour or bread from any mill or other place to the place of exportation, or to any landing-place, but such as shall be provided with a good and sufficient covering; and that no flour shall be left at any landing or other place, in order to be transported, except the same be put in a store, or shelter sufficient to keep it dry; and that no flour or bread shall be carried or conveyed by water from any mill or landing-place to the place of exportation in any open boat, flat or shallop, without a good and sufficient covering or tarpawling, to secure the same in case of rain.

Waggons; &amp;c. to have covering, &amp;c.

X. *And be it enacted,* That if the owner or possessor of any cart, wain or waggon, boat, flat or shallop, shall cause or suffer any flour or bread to be wet or take damage, for want of due care, or not being provided for as aforesaid, in the moving, carrying or transporting the same from any mill or other place to the place of exportation, every such person shall forfeit, for every cask of flour or bread so damaged, the sum of one shilling.

Penalty for damage done to bread, &amp;c.

XI. *And be it enacted,* That no merchant, or other person whatsoever, shall lade or ship any flour for transportation out of this state, before he, she or they shall offer the same to the view and examination of the inspector of the port, from whence the same is shipped, or intended to be shipped, or his deputy, under the penalty of five shillings for every cask: And the said Inspector or deputy shall try and search the same, by boring the head, and piercing it through with a proper instrument, in order to prove whether it be honestly and well packed; as also to enable him to judge of the goodness thereof, and shall afterwards plug up the hole: And if the said inspector shall judge the same to be merchantable, he shall brand every such cask of flour on the quarter with the arms of the

Flour to be inspected.

Merchantable flour to be branded with state arms, &amp;c.

Reward of inspectors.



1781. state of Pennsylvania, in a fair and distinguishable manner, for which he shall receive one penny for each cask, and no more ; but if he shall adjudge such flour not to be merchantable, and the possessor and owner thereof shall acquiesce under such judgment, he shall in such case pay to the said Inspector the said sum of one penny for each and every such cask, and on his refusal or neglect, the Inspector may recover the same as debts under forty shillings are recoverable, with costs of suit ; and if the possessor of any flour shall offer to transport the same out of this state, without being proved and branded in the manner herein before mentioned, the same flour shall be forfeited.

Manner of proceeding in cases of dispute respecting the fineness of flour, &c.

XII. *And be it further enacted,* That where any dispute shall arise between any of the said inspectors, or their deputies, with the owner or possessor, concerning the fineness or goodness of such flour, or the goodness of the materials, of which the casks are made, then, upon application made by the owner or possessor of such flour to one of the Magistrates of the city and county, where the dispute shall arise, the said Magistrate shall issue his warrant to three indifferent and judicious persons, to be triers thereof (one of them to be named by the said owner or possessor, one by the said Inspector or his deputy, and the third by the said Magistrate) directing the said triers to view and examine the said flour, and make report to him forthwith touching the condition thereof ; and that if they shall find the said flour not merchantable, that they certify to him the cause thereof, and whether it be, that the said flour wants due fineness, is musty, sour, or the like : and if sour, whether such sourness is occasioned by the greenness of the timber whereof the casks are made, or by being brought in an open boat, or shallop, or upon the deck of any other vessel, without a tarpawling or cover, or for any other, and what cause ; and the said Magistrate shall thereupon give his judgment, agreeable to the report of the said triers, or any two of them ; and in case the said Magistrate shall, on such report, adjudge the flour not to be merchantable, he shall award the owner or possessor thereof to pay into the hands of the said Inspector, one shilling for each and every such cask so adjudged to be unmerchantable, besides reasonable costs ; but in case the said flour shall be found merchantable, the Inspector shall be adjudged to pay all the costs which shall have accrued ; and the said officer shall thereupon brand the said flour, in the manner before directed ; and if it shall appear, either by the report aforesaid, or otherwise, that any flour is become unmerchantable by fault of the miller, bolter, shallopman, flatman, carter or waggoner, in every such case the owner of such flour shall recover against the said miller, bolter, shallopman, flatman, carter or waggoner, by default of whom, or of whose servant or servants, such flour shall have been injured, the damages which such owner shall have sustained, with full costs of suit. (1)

Number of barrels of flour shipped to be

XIII. *And be it further enacted,* That the masters of ships and other vessels lading flour for exportation from this state shall in their manifest, which in pursuance of the act, entitled *An Act*

(1) For settling disputes between the merchant and inspector, see chap. 1422

*for regulating trade and navigation in this state,\** they are obliged to exhibit and deliver to the Naval-Officer thereof, expressly and distinctly declare how many barrels of flour are shipped on board of their respective vessels, and by whom each parcel thereof is shipped, to which manifest or declaration the Inspector aforesaid shall have free access, and liberty to take abstracts thereof; and if any master of a vessel shall refuse or neglect to make such return to the Naval-Officer, as aforesaid, he shall, over and above the penalty in the said last named act mentioned, forfeit to the said Inspector the amount of his fees for trying and examining the whole cargo of flour shipped on board of his vessel. 1781.

set forth in the manifest, &c.

and by whom shipped, &c. [\* chap. 804.]

Penalty:

XIV. *And be it further enacted,* That the said Inspector, or his deputies, shall have full power and authority, by virtue of this act, and without any further or other warrant, to enter on board any ship or other vessel whatsoever, lying or being in any port or place of this state or into any mill, store or granary, within the same, to search for and discover any flour intended to be transported out of this state; and if the owner or possessor thereof, or their servants or others, shall deny him or them entrance, or if the said Inspector or his deputies shall be in any wise molested in making such discovery as aforesaid, or if such owner or possessor shall refuse to permit the said Inspector or his deputy to view or examine the same, every such person so offending, shall forfeit and pay the sum of ten pounds for every such offence.

Inspector to enter on board vessels, and search, &c.

Penalty on persons preventing him, &c.

XV. *And be it further enacted,* That if any person or persons shall counterfeit the aforesaid brand marks, or either of them, or impress or brand the same on any cask of flour, he, she or they, being thereof legally convicted, shall, for the first offence, forfeit and pay the sum of five pounds; for the second offence, the sum of ten pounds; and for the third offence, shall be committed to gaol, and sentenced to the pillory, there to stand the space of two hours, on a market day, in any city, borough or town, where the fact shall have been committed.

Persons counterfeiting brand marks, how to be punished.

XVI. *And be it further enacted,* That none of the said Inspectors or their deputies shall, directly or indirectly; vend, barter, sell, exchange or trade in flour, under the penalty of fifty pounds, to be recovered by action of debt, bill, plaint or information, by any person who will sue for the same to effect, in any Court of Record in this state; the one half thereof to the use of the person or persons so suing, the other half to be paid to the Treasurer of the state, for the public use: And every person or persons so offending, and thereof convicted, shall be, and they are hereby, disabled from acting thereafter in their respective offices.

Inspectors not to trade in flour.

XVII. *And be it further enacted,* That the said Inspectors be empowered to appoint deputies under them; but before any Inspector or deputy shall do any thing in his said office, he shall take an oath or affirmation, before any one Justice of the Peace of any county of this state, faithfully and impartially to perform his trust and duty, to the best of his skill and understanding, according to the directions of this present act.

Inspectors may appoint deputies, who shall take an oath or affirmation, &c.

XVIII. *And be it further enacted,* That all and singular the fines, forfeitures and charges mentioned in this act, where the same

Fines, forfeitures and charges,



1781. <sup>how to be recovered,</sup> respectively exceed not five pounds, shall be recovered in the same manner as other debts and demands under the said sum of five pounds are recoverable; and where the same exceed the said sum of five pounds, they may be sued for, and shall be recovered in any Court of Record in this state, by bill, plaint or information; wherein no essoin, protection, or wager of law, nor more than one imparlance, shall be allowed: All which said fines and forfeitures, <sup>and applied.</sup> not herein before directed how to be applied, shall be paid to the said Inspector or his deputy, who shall keep a just and true account thereof; and shall once in every year, at the time of appointing Overseers of the poor, deliver unto the Magistrate a true and exact list of all such fines and forfeitures; the one half whereof he shall immediately pay into the hands of the Overseers of the poor of the place where the forfeitures happen, and shall retain the other half to his own use; and if any of the said Inspectors or deputies shall neglect or refuse to account and pay as aforesaid, he shall forfeit his office.

Inspectors names.

Duration of their offices.

Vacancies how to be supplied. [Obsolete. The appointment is now vested in the Governor by the Constitution.]

[XIX. *And be it further enacted,* That Jacob Bright be, and he is hereby appointed Inspector for the city and county of Philadelphia; and Adam Grubb for the county of Chester; and Joseph M'Elvaine for the county of Bucks; the said Inspectors to hold their offices, from the publication of this act, for the space of four years, and from thence until the end of the next sitting of Assembly, and no longer, except they shall be re-appointed by the Assembly; and if any or either of the said Inspectors shall happen to die, or by any accident, or otherwise, shall be rendered incapable, or shall knowingly suffer any flour to be carried out of this state, without trying every cask thereof as aforesaid, or shall neglect to keep a sufficient number of deputies to assist him in the execution of his office, whereby the possessor of such flour shall suffer any damage or delay, or shall otherwise misbehave him or themselves therein, it shall and may be lawful to and for a majority of the Justices of the Peace of the city of Philadelphia, or of the respective counties before mentioned, and they are hereby enjoined and required, on the conviction of the said officer of any of the said crimes, or on his death, to nominate and appoint some other fit person, in his or their place or places, who shall thereupon, on taking the said oath, be the Inspector, until the Assembly shall appoint another, and be invested with the powers, and subject to the duties, herein before mentioned.

Passed 5th April, 1781.—Recorded in Law Book vol. I. page 423. (m)

(m.) By an act of the 28th of December, 1781, (chap. 947,) a supplement was passed to the act in the text, by which a penalty was imposed for offering flour for sale, in casks made of unseasoned materials; the penalty for not entering brand marks was made thirty shillings for every neglect, instead of five shillings *per day*; the penalty where casks are deficient in weight, was lowered; the Inspector's brand was changed from the state arms to S. P. and

the exportation of middlings was regulated. By an act of the 15th of September, 1784 (chap. 1101,) further provisions were made for the inspection of superfine flour. By an act of the 12th of September, 1789, (chap. 1422,) further regulations are made respecting the inspection of middlings; millers and bolters are allowed to pack wheat flour for exportation in casks made of staves twenty-three inches long, and twelve and an half inches diameter at

the head, complying with certain terms; and a penalty is imposed for offering flour for sale in casks of dimensions inferior to those prescribed by law. For acts making provision for the inspection of flour in the western counties, see post. chap 1006, chap. 1584. For acts regulating the assize of bread, see chap. 707, 1936. (*Note to former edition.*)

By a supplement to the laws for preventing the exportation of flour not merchantable, passed April 17th, 1795, (chap 1851,) all flour or middlings brought for sale as flour of wheat, shall be condemned if there is any flour of Indian corn mixed with it, and a penalty therefor. But an appeal is allowed from the decision of the Inspector: and if the decision is confirmed, the costs shall be paid by the owner, otherwise by the Inspector. Appeal must be prosecuted within 20 days, &c.

By another supplement, passed March 16th, 1798, (chap 1964) The Inspector of flour is authorized to receive the

fees of inspection from the owner or owners, his, her or their agent or factors, or other persons in possession of the flour at the time of inspection, and the said owner, &c. shall pay the full amount of the fees due for inspection, and the owner, &c so paying, is authorized to demand and receive the said fees of inspection from the purchasers of the flour, and the fees of inspection so paid, shall be a charge on the sale of the flour by the owner, &c. or other person in possession after its inspection, distinct and separate from the price agreed on for the said flour.

By a further supplement, passed March 15th, 1800. (chap. 2133.) Flour made of rye and Indian corn is subjected to inspection, and the manner of packing and branding the same is prescribed; may be packed in hogsheads of certain dimensions, and the inspection fee fixed; fines, penalties and forfeitures to be recovered as directed by the act in the text.

## CHAPTER DCCCCXXIX.

*An ACT for establishing a Land-Office, and for other purposes therein mentioned.*

**WHEREAS** many of the lands in this state, heretofore taken up and located under grants, warrants and other office rights, before the tenth day of December, in the year of our Lord one thousand seven hundred and seventy-six, are yet unpatented, and the purchase money and arrearages of purchase money thereon due are vested in the commonwealth, subject to the disposal of the Legislature; and the owners and holders of such rights, since the shutting up of the land-office, have not had it in their power to pay in the purchase money, or arrearages of purchase money, and obtain patents, to compleat their titles to the same: For remedy whereof,

**II. Be it enacted, and it is hereby enacted,** That an office be, and it is hereby erected, constituted and appointed, which shall consist of three persons, or officers, called or known by the names of the Secretary of the land-office, Receiver-General\* and Surveyor-General, which office shall be held and kept in the city of Philadelphia, or such other place as the General Assembly shall from time to time order and direct, and that into the said office shall be removed and safely kept all the records and papers of the former land-office or Board of Property, in the hands, custody or possession of the late Secretary, Surveyor-General, Receiver-General, or of any other person or persons entrusted with the care or management thereof, by or under the late Proprietaries of the province of Pennsylvania, or of their Governors or Lieutenant or Deputy-Governors; and all future grants and confirmations of land shall issue from the said office, in manner and form herein mentioned.

Office to consist of three persons.

Their names:

Where to be kept.

Records of the former offices to be removed  
[\*The office of Receiver-General is abolished, and the duties vested in the State-Treasurer.]



1781.

Officers to be appointed by the Assembly, &c.  
[The appointment of all officers is now vested in the Governor by the constitution.]  
The fees are regulated by a subsequent act.]

[III. *And be it further enacted,* That the said Secretary of the Land-office, the Receiver-General and Surveyor-General shall be appointed by the General Assembly, and commissioned by the President or Vice-President, in Council, and shall hold their said offices for the term of five years, unless sooner removed by the Representatives of the freemen of this commonwealth, in General Assembly met. And the said Secretary of the Land-Office, Receiver-General, and Surveyor-General, shall be entitled to receive such fees, from time to time, as heretofore have been allowed by law, until the same shall be altered by the Legislature, and shall have power to appoint deputies or clerks, to assist in executing the business of their respective offices, for whose conduct they shall be responsible, and copies of records, entries and papers of the said office, duly attested by them, or their lawful deputies, under their hand and seal of office, shall be as good evidence as the original bye-law might or could be.] And the Surveyor-General shall have power to appoint a deputy or deputies in any county of this state, who shall have power to make and return into the Land-Office surveys of land, only in the county for which such deputy or deputies shall be appointed, for the conduct of which deputy or deputies the said Surveyor-General shall be responsible.

Officers to enter into obligations.

IV. *And be it further enacted,* That the Secretary of the Land-Office, Surveyor and Receiver-General, shall, severally, before they are empowered to act, enter into an obligation, before the President of the state, with one or more sufficient sureties, in the sum of ten thousand pounds, to the commonwealth of Pennsylvania, conditioned for the faithful discharge of their respective offices.

Persons entitled to lands within the Indian purchase, may have patents on condition, &c.

V. *And be it further enacted,* That all and every the person and persons who are or shall be entitled, either in law or equity, to any lands in this state, within the limits of the Indian purchase, by virtue of any grant, warrant or location, before the tenth day of December, in the year of our Lord one thousand seven hundred and seventy-six, upon which patents have not issued, shall and may, upon payment to the Receiver-General of the Land-Office, hereby established, of the purchase money, and interest thereon, or the arrearages of such purchase money and interest agreed on for the said lands, together with the office fees; or if no purchase money or interest is or remains due therefor, then upon payment of the office fees, be entitled to receive a patent or patents for the same, as is hereafter directed, any former law, custom or usage, to the contrary hereof in any wise notwithstanding. And in all cases where surveys have not yet been made or returned to the former Land-office, on any grant, warrant or location, issued before the said tenth day of December in the year aforesaid, the owner or owners thereof, upon applying to the Land-office, at any time within the space of one year from the passing of this act, and paying down the one third of the purchase money and interest then due on the same, shall be entitled to receive an order, directed to the Surveyor-General, to have the same surveyed and returned; and after such survey and return, on payment of the residue of the purchase money, and interest, in manner aforesaid, he or they shall be entitled to receive a patent and confirmation of the same, in like manner.

Where surveys have not been returned to the former office, an order of survey and a patent may be obtained on certain conditions.

[VI. *And be it further enacted*, That all purchase money due for 1781. lands in this state taken up, or entries thereof made, by any grant, licence, warrant, application, or office right whatever, before the said tenth day of December, in the year aforesaid, shall be paid in- to the Receiver-General of the Land-Office hereby established, that is to say; the one fourth part thereof in one year after the passing this act, one other fourth part thereof in two years after passing this act, and one other fourth part thereof in three years after passing this act, and the residue thereof in four years after the passing this act.\* And in case of neglect or refusal of paying the aforesaid quotas of the purchase money, and interest, at the time herein limited for payment thereof, by the space of six months, it shall and may be lawful for the Commissioners of the county where the lands lie to issue their warrant to the Sheriff of the said county, who is hereby enjoined and required to execute the same, commanding him, after due notice to expose the same lands, or so much thereof as may be necessary to discharge the sum due, with interest and costs, to sale, and transmit the same to the Receiver-General of the Land-Office of this state; and the said Sheriff shall give the purchaser a deed for the land so by him sold, upon receipt of the purchase money and interest.

Purchase money to be paid to the Receiver-General.

Times of payment, &c.

Manner of proceeding, in case of refusal to pay.

[\*Further time allowed, chap. 953, sect. 4.]

[Sect. 6, 7 & 8, are obsolete.]

[VII. *Provided always*, That nothing herein contained shall empower any Commissioner to issue his warrant, or any Sheriff to sell any lands, for non-payment of purchase money and interest, where actual settlements have been made by the owner or owners of the lands, and where the owner or owners of such lands have been drove off by the power of the enemy.]

[VIII. *And be it further enacted*, That the several officers of the Land-Office shall meet annually, and transmit to the respective County Commissioners lists of the delinquents for purchase money and interest, or arrearages of purchase money and interest, in their respective counties, under the hand and seal of the Secretary of the Land-Office.]

List of delinquents to be transmitted to the County Commissioners.

IX. *And be it further enacted*, That all lands within this state heretofore surveyed under any grant, warrant, location, or other office right, shall be returned into the Surveyor-General's office (if not already returned) in the space of nine months from the passing of this act;† and upon application made by the owners of such lands to the surveyor, and their paying or tendering him his legal fees, in such case, if the surveyor refuse or neglect to make, or cause to be made, returns of the said land, he shall forfeit and pay the sum of fifty pounds, the one half to the informer, and one half to the use of the state, to be recovered in any Court of Quarter Sessions in this state, by indictment or information.

Returns of certain lands to be made within a limited time.

[†See chap. 953, sect. 5, further time allowed.]

X. *And be it further enacted*, That all patents to be granted in pursuance of this act shall be by deed poll, and signed by the President, or, in his absence, by the Vice-President in Council, and countersigned by the Secretary of Council, and under the state seal in form following, viz. "The Supreme Executive Council of the commonwealth of Pennsylvania, To all to whom these presents shall come, greeting, Know ye, That in consideration of the sum of lawful money, paid by into the Receiver-General's office of this commonwealth, there is granted by the said commonwealth unto the said a certain tract or parcel of land, containing

Form of the patent.



1781. acres, lying in the county of \_\_\_\_\_ and township of \_\_\_\_\_ (describing the particular bounds of the land, and the date of the survey on which the grant issues) with its appurtenances, To have and to hold the said tract or parcel of land, with the appurtenances, unto the said \_\_\_\_\_ and his heirs, to the use of the said \_\_\_\_\_ his heirs and assigns for ever. (Here insert the tenure and reservation.) In witness whereof his Excellency \_\_\_\_\_ Esquire, President (or if absent) the Honourable \_\_\_\_\_ Esquire, Vice-President of the Supreme Executive Council, hath hereunto set his hand, and caused the state seal to be hereunto affixed, the \_\_\_\_\_ day of \_\_\_\_\_ in the year of our Lord \_\_\_\_\_ and of the commonwealth the \_\_\_\_\_ Attest. \_\_\_\_\_ Secretary."

Which patent shall be recorded in the Rolls-Office of this state.

Lands granted to be clear of all reservations, &c.

XI. *And be it further enacted*, That all and every the land or lands granted in pursuance of this act, shall be free and clear of all reservations and restrictions as to mines, royalties, quit-rents, or otherwise, so that the owners thereof respectively, shall be entitled to hold the same in absolute and unconditional property, to all intents and purposes whatsoever, and to all and all manner of profits, privileges and advantages, belonging to or accruing from the same, and that clear and exonerated from any charge or incumbrance whatsoever, excepting the debts of the said owner, and excepting and reserving only the fifth part of all gold and silver ore for the use of this commonwealth, to be delivered at the pit's mouth clear of all charges.

The grants, &c. to which this act shall extend.

XII. *And be it further enacted*, That nothing in this act shall extend, or be construed to extend, to give validity to any grant, warrant or location, issued after the fourth day of July, in the year of our Lord one thousand seven hundred and seventy-six, for any lands or lots within ten miles of the city of Philadelphia, or within three miles of any county town in this state, or to any warrant, grant or location, for a greater quantity of land than five hundred acres in one tract,\* or to any lands or lots not granted in the usual forms of the Land-Office, or to lands not within the Indian purchase, any thing herein contained to the contrary in any wise notwithstanding.

[\*See the case of Hubley's Lessee v. Chew, in the note to chap. 953.]

Passed 9th April, 1781.—Recorded in Law Book vol. I. page 431. (n)

(n) A supplement to this act was passed June 25th, 1781, (chap. 936,) which defines the term *Location*, in the following manner. "An application made by any person for land in the office of the Secretary of the late Land Office of Pennsylvania, and entered in the books of the said office, numbered, and sent to the Surveyor-General's office."

The act also directs the President, or Vice-President, in Council to sign all warrants of acceptance and resurvey, &c. And the Receiver-General to pay the money to the State-Treasurer once in every month, &c. and fixes the rate of exchange at one hundred and sixty-six and two thirds, of the currency of this state, for one hundred pounds sterling.

By an act passed April 4th, 1807, (chap 2794,) continued by an act passed December 24th, 1807, (chap. 2875,) the Secretary of the Land-Office is to sign all Patents and Land Warrants until Jan'y 1st, 1818.

A board of property is instituted by an act passed April 5th, 1782. And further time given for the payment of the purchase money, and for the Surveyor General to receive returns from his deputies, (chap. 953.)

But by an act passed March 29th, 1809, the offices of Receiver-General and Master of the Rolls are abolished, and new arrangements made in the Land-Office. The Surveyor-General and Secretary of the Land-Office, and the Secretary of the Commonwealth are to constitute the Board of Property.

The Surveyor-General and Secretary of the Land-Office to be appointed for three years, but removeable by the Governor, on the address of both houses of the Legislature. And see the act relating to the patenting of Lands, passed February 21st, 1810.

ting to lands, see the General Index to this edition.

1781.

For a general summary of the law on this important subject, and notes of cases decided on the land titles in this state, see the act for opening the Land-Office, &c. passed April 1st, 1784, (chap. 1083.)

## CHAPTER DCCCCXXI.

*An ACT for the better support of the public credit, by an immediate sale of the lands therein mentioned, and fully securing the purchasers thereof in their titles, and also for preserving the common lands appurtenant to the city of Philadelphia, and other towns in this state, from unwarrantable encroachments.*

**WHEREAS** the speedy and honourable redemption of the bills of credit, issued for the support of the just and necessary war in which we are now engaged, will have a happy tendency to re-establish public faith, and induce well-affected individuals freely to advance their property for the purposes of government, if they are secured of a true and real equivalent : And whereas the bills of credit of this state, dated on the twenty-ninth day of April last, were funded upon the solid property of the state, consisting of the Province Island, and the unappropriated lots contained within the bounds of the city of Philadelphia, which said lands were, by a former act of Assembly, subjected to sale, to be made by the President or Vice-President in Council, at any time within four years thereafter : And a speedy sale of the said island having become necessary, the same hath been advertised at public auction, to redeem the said bills of credit, so far as the price thereof shall extend : And whereas it is manifest that a part of the said bills of credit will remain unredeemed, after the said island shall be sold as aforesaid, for the redemption of which the said city lots have been solemnly pledged, and it is necessary to dispose of the same, in like manner, so that the purchasers may be assured of a clear and indefeasible title, and thereby be induced to offer the full value thereof :

**II.** *Be it therefore enacted, and it is hereby enacted,* That it shall and may be lawful for the President or Vice-President in Council, and he is hereby authorised and required, with all convenient speed, to apportion and set off such and so many of the said city lots, as shall, in his judgment and discretion, be sufficient to satisfy and redeem the residue of the said bills of credit, together with the interest which shall be due thereon, and also the charges of selling the said lands, and cancelling the said bills of credit remaining unredeemed, after the sale of the said island, and, so apportioned and set off, sell the same at public auction to the highest bidder, pursuant to the said act, entitled *An Act for striking the sum of one hundred thousand pounds in bills of credit, for the present support of the army, and for establishing a fund for the certain redemption of the same, and for other purposes therein mentioned ;*\* in all cases

Certain city lots to be sold at public auction,

to redeem bills of credit, &c.

[\*chap. 896.]



1781. receiving in payment for the said island and the said lots, the said bills of credit, issued pursuant to the said act, or Spanish milled dollars, or an equal sum in gold or silver, and no other money whatsoever.

What money shall be received in payment.

Purchasers to have indefeasible estates in fee-simple.

III. *Be it also enacted*, That each and every purchaser of the said lands, herein before mentioned, and every part thereof, having received his deed or grant from the President or Vice-President in Council, shall, from thenceforth, become seized of a sure and indefeasible estate in fee-simple, against all claims or demands whatsoever; and in case of any suits brought for such land, or any part thereof, the grantee under this act, his or her heirs or assigns, may plead the general issue, and give this act in evidence, which shall be final and conclusive to the court and jury against any claimant or demandant, in any suit to be brought at any time hereafter for the lands which shall be granted as aforesaid, or any part thereof.

IV. And whereas it may happen, that claims may be hereafter made upon some of the said lots, by the descendants of the original purchasers under William Penn, Esquire, or purchasers under his successors, or grantees, who have neglected to set out and appropriate the same in severalty, so as to be distinguished from the common lands appurtenant to the said city: For remedy whereof,

How just claimants are to be satisfied.

V. *Be it enacted*, That in every such case the claimant, having ascertained the justice and right of his claim agreeable to the laws of this state, as herein after set forth, shall be entitled to a full equivalent for the same, having due regard to situation, in any other of the unappropriated lots appurtenant to the city, and now vested in this commonwealth.

Manner in which claimants are to proceed;

VI. And to the end that speedy and ample justice may be done to every such claimant, prosecuting his claim within the time herein after limited, *Be it enacted*, That in case any suit be brought, every such claimant, or other claimant of any part of the lands, whereof this commonwealth is possessed (lands in the counties of Bedford, Northumberland, Westmoreland and Washington, only excepted) before he or she takes possession of any part of the said lots or lands so claimed, shall proceed in manner following, and no other, viz. He shall present a petition to the President or Vice-President in Council, setting forth, in a summary manner, the nature of his claim, and whence derived; and if, in such petition, he or she shall request a trial by jury, the said President or Vice-President in Council shall, *ex officio*, grant the same, by directing the Attorney-General to receive a declaration in ejectment against himself, as representing the commonwealth in such cases, wherein the premises claimed shall be particularly described, and appear thereto in the Supreme Court only, and proceed to trial thereupon, according to the laws and practice of this State in possessory actions. And if it shall so happen, that judgment be obtained against the said Attorney-General, on verdict or demurrer, and the court awards costs thereupon, the said President or Vice-President in Council is hereby authorized and required to cause the same to be paid, the bill being first duly taxed, together with necessary and

and the justice of claims is to be ascertained.

How costs are to be paid, &c.

reasonable expenses attending the defence, out of any monies which shall be in the hands of the Treasurer of the state, not otherwise specially appropriated. 1781.

VII. *And be it further enacted*, That upon such claim being ascertained as aforesaid, or if the claimant shall not, in his or her said petition, request a trial by jury (which omission shall be deemed a full and final consent to abide the determination of the President or Vice-President in Council on the merits of his or her claim) and if such determination shall be in his or her favour, he or she shall then be entitled, at his own expense, to a writ, to be framed by the Prothonotary of the Supreme Court, in which the premises recovered shall be also particularly described, directed to the Sheriff of the county, commanding him to summon a jury of twelve good and lawful men, who, being duly sworn or affirmed, shall proceed to assign to the said claimant so much of the said unappropriated lots within this city, as shall in their judgment (having due regard to quantity and quality) be equal in value to the lots so claimed by him or her; and such writ being duly returned to the said Supreme Court, such return approved of by the court, and judgment thereon entered, shall be conclusive in favour of the party, and a writ of possession issued thereupon.

Claimants  
to have a  
certain writ,  
&c.

VIII. *And whereas* a century hath now elapsed since the granting of the original charter of Pennsylvania, and upwards of eighty years since its actual settlement, and it being reasonable that there should be a limitation of suits and dormant claims upon the estate of the public, as well as that of individuals:

IX. *Be it therefore enacted*, That no person shall have or maintain any action, real, personal or mixed, against the commonwealth, represented as aforesaid, or otherwise, for any lands, tenements or hereditaments, within Pennsylvania, by virtue of any grant or conveyance of the original Proprietor to his or her ancestor or predecessor, or to the ancestor or predecessor of his or her grantor, unless he or she shall commence and prosecute the same within seven years after the publication of this act; or by virtue of any grant or conveyance of the subsequent Proprietaries, of this state (lands in the counties of Bedford, Northumberland, Westmoreland and Washington, only excepted) but within ten years from the publication hereof; and in default thereof, all and every such claimants or claimant shall be utterly barred and excluded from any entry, right of entry, title, property and demand, in or upon such lands, or any suit whatsoever, in law or equity, for the same.

Time limited in which  
claims are to  
be made  
against the  
common-  
wealth.

X. *Provided always*, That if any person or persons, who is or are entitled to have or maintain any such action, be, at the time of the publication of this act, within the age of twenty-one years, *feme covert*, *non compos mentis*, imprisoned, or beyond sea, other than those who have voluntarily gone to the dominions of the King of Great-Britain from this, or any of the United-States, since the fourth day of July, one thousand seven hundred and seventy-six, that then such person or persons shall be at liberty (except as before excepted) to bring the said actions; so as he or they commence the same within such times as are herein before limited, after his, her or their coming to or being of full age, discoverture, sound me-



1781. mory, at large, or returning to this state, as in the case of other persons.

XI. And whereas divers persons, pretending title or leases or permission from the late Proprietaries, or without any pretence whatsoever, have taken into possession divers lots appurtenant to the city, and to the other towns within this state, which lots were held by the said Proprietaries as such, and not in their private several right and capacities : And whereas such possession is not only injurious to the other citizens, who are entitled to the use of said lands, as common for their cattle, but will embarrass the future sale and appropriation of the said lots, for the general benefit of the state : For remedy whereof,

The manner in which the city lots and certain lots appurtenant to other towns are to be taken care of.

XII. *Be it enacted*, That the care and custody of the city lots in Philadelphia shall be, and is hereby vested in the wardens of the city ; and the care and custody of the lots appurtenant to the town of Reading shall be, and hereby is, vested in Samuel Mifflin, Henry Christ and Henry Haller ; and the care and custody of the lots appurtenant to the town of York, in the county of York, shall be, and hereby is, vested in Archibald M'CLean, Michael Swoope and William Scott ; and the care and custody of the lots appurtenant to the town of Carlisle, in the county of Cumberland, shall be, and hereby is, vested in John Montgomery, Samuel Laird and James Pollock ; and the care and custody of the lots appurtenant to the several towns of Easton, in the county of Northampton, Bedford, in the county of Bedford, Sunbury, in the county of Northumberland, and Hannah's town, in the county of Westmoreland, shall be, and is hereby, vested in the Justices of the Peace residing in and within two miles of the said towns respectively ; to the end that the said lots may be preserved from encroachment and private use, and for the benefit of common to the inhabitants of the said city and towns, until the same be appropriated, under the authority of the legislature of the state, for building, improvement or other use. And that all such encroachments and unwarrantable inclosures, within the said city and towns, may be discovered, and removed without delay :

Manner of proceeding in cases where lots are in the possession of private persons, &c.

XIII. *Be it enacted*, That the said Wardens of the city of Philadelphia, the said Samuel Mifflin, Henry Haller, Henry Christ, Archibald M'CLean, Michael Swoope, William Scott, John Montgomery, Samuel Laird, and James Pollock, of Reading, York and Carlisle, and the said Justices of Northampton, Bedford, Northumberland and Westmoreland, respectively, or any two of them, are hereby authorized and required, on their own knowledge, or on the complaint of any two reputable freeholders made to them, in writing, and in the said writing disclaiming any right or pretence in themselves to said lots, or any part thereof, to summon any person possessing any of the said lots before any Justice of the Supreme Court, in the vacation, or on the circuit, to shew by what warrant or authority he or she holds or possesses the said lots, or any part of them ; and if the said party shall not plead title to the premises, under a patent, or judgment of court, or a possessory right, by virtue of an unexpired lease from the said Proprietaries, or their agent, duly authorized, at the same time producing such patent,

1781.

judgment or lease, or an authentic record thereof, it shall and may be lawful for the said Justice, at the expiration of fifteen days from the service of said summons, and he is hereby required to award the possession of said lot to the commonwealth, and issue his warrant to the Sheriff of the county, to abate and remove the enclosures of said lot, or buildings erected thereon, as in the case of common nuisance, and open the premises, as a free common of pasture to the inhabitants; upon which proceedings no writ of *certiorari*, or other writ of removal, to any superior court, shall be allowed or received, so as to stay the delivery of the possession, agreeable to the award of the said Justice, and the tenor and direction of said writ. But if the said judgment shall be reversed for any cause whatsoever, the party shall be restored to his possession.

XIV. *Provided always*, That nothing herein contained shall defeat or prejudice, or be construed to the defeasance or prejudice of any title, which the party so dispossessed may have, and which he may prosecute, as herein before directed.

[XV. *Be it also enacted*, That if any suit or suits shall be brought against any person or persons, for any thing done pursuant to this act, the action shall be laid in the county where the cause of action, shall arise, and not elsewhere, nor after twelve months; and the defendant or defendants in such action to be brought may plead the general issue, and give this act and the special matter in evidence; and if the jury shall find for the defendant or defendants in such action or actions, or the plaintiff become nonsuit, or discontinue his, her or their action or actions, after the defendant or defendants shall have appeared, or if, upon demurrer, judgment shall be given against the plaintiff or plaintiffs, the defendant or defendants shall recover treble costs, and have the like remedy for the same, as any defendant or defendants had or have, in other cases, to recover costs by law.]

Manner of proceeding where persons are sued for executing this act.

[Obsolete.]

[XVI. *Be it also enacted*, That if the said Wardens of the city of Philadelphia, or Samuel Mifflin, Henry Christ, Henry Haller, Archibald M'Clean, Michael Swoope, William Scott, John Montgomery, Samuel Laird, and James Pollock, of the towns of Reading, York and Carlisle, or the said Justices dwelling in or near the towns of Easton, Bedford, Sunbury, and Hannah's town, refuse or neglect to perform the duties herein and hereby directed, and the same shall be presented in the Court of Oyer and Terminer, or the Court of General Quarter Sessions of the peace of the proper county, and bills of indictment in either of the said Courts be found against them, or any of them, for such refusal or neglect, whereon they or any of them shall be prosecuted to conviction, they shall pay a fine of twenty pounds each, for every such offence, to the use of the poor of the said city and towns respectively, to be paid to the overseers thereof.]

Penalty on persons refusing to serve.

[Obsolete.]

How recovered, and applied.

Passed 10th April, 1781.—Recorded in Law Book vol. I. page 434. (a)

(a) By an act passed April 8th, 1786, (chap. 1214,) after reciting, that many of the lots sold in pursuance of the act in the text had reverted to the state, on account of the non compliance of the purchasers with the terms of sale, and that a considerable number remained unsold, that the house and lots in Market Street, the forfeited estate of *Joseph Galloway* remained un-



1781. occupied, and in a state of decay, and that it was necessary to discharge the debts due by the state, it was enacted, that the lots so reverted and unsold, except eight lots, numbered in the plan of the city, 34, 35, 36, 37, 38, 39, 40, & 41, should be sold under the direction of the Supreme Executive Council, &c.

The Supreme Executive Council was further directed to reserve so many of the public lots, at least two hundred feet, and not more than four hundred feet square in such part of the city as they should judge most convenient, to be appropriated as a burial ground for the interment of deceased strangers, and such other persons as were not in communion with any religious society at the time of their decease.

The form and effect of the deed to be given to purchasers, was prescribed, and *Galloway's* house and lots directed to be sold, in like manner as the city lots; and the purchase money was required to be paid, received, and accounted for by the Receiver General of the Land-Office, in specie, bills of credit of the state of the last emission, depreciation certificates, or in other certificates of debts due by this state, on which interest was receivable at the treasury of the commonwealth.

By a supplement to the act in the text, passed April 8th, 1791, (chap. 1544,) after the dissolution of the powers of the Supreme Executive Council, all the powers of that body relative to the claims depending before it, at the time of its dissolution, and all powers and authorities necessary to carry into effect the decisions of that board, were revived, continued and vested in the Judges of the Supreme Court, who were empowered to hear and determine all claims for city lots, agreeably to the directions of the act in the text which were depending or made at the time of the dissolution of the Executive Council, &c. And in case equivalents in lots for the whole, or any part of claims, could not be had, owing to the sale by the commonwealth, of lots which should have been assigned to those entitled thereto, the court is directed to award an inquest to value such lots, and return the valuation to the court, who shall certify the same to the Governor; and in case of a partial equivalent having been given, by virtue of the decree of the late council, and a balance should appear to be due, for which no equivalent in lots had been obtained, the said judges shall certify the amount of such balance to the Governor, or in case a lot or lots assigned by any jury, should appear to the judges

not to have been within the power of the state to grant, as an equivalent in whole or in part, the court, on being duly satisfied of the value of the lot so improperly assigned, shall certify to the Governor the amount of the value of such lot, &c. and the Governor shall cause the amount of the valuation first mentioned, that of the balance before stated, or the value of the lot so improperly assigned, to be entered in the books of the accounting officers, and certificates shall be issued for the amount bearing interest from the date, in favour of the parties entitled thereto. But no claim to be admitted which is barred by the original act. Petitions filed in due time with the executive Council, on which no decision was had, shall be decided on by the Judges.

By an act directing the sale of such of the Barrack and City lots, as remain the property of this commonwealth, passed April 5th, 1797, (chap. 1943.) The officers of the Land-Office were required to offer for sale all the barrack lots in the Northern Liberties, for the best price that could be obtained, at public auction, and all the public lots, in the city not before appropriated by law. Lots not paid for by the purchaser, to be sold a second time at public auction, and the first purchaser to be liable for any deficiency.

All such claims for city lots, as were made by petition to the Executive Council, and remained undecided, might be renewed by petition to the Judges of the Supreme Court, who were directed to proceed to hear and determine the same. And if their determination should be in favour of any such claim then to direct the Sheriff of Philadelphia county, by inquest to make valuation of such claim, and assign in satisfaction thereof such and so many of the city lots, unappropriated, as in their estimation would be equal to such valuation, and return the said valuation and assignment to the judges, who were to direct the Prothonotary to grant a certificate thereof under the seal of the court to the party interested, upon which certificate the Governor was to direct the Surveyor General to lay out the same, and grant a patent therefor; but if no unappropriated lots could be found, a certificate was to be granted for the amount of the valuation, &c. But if the determination of the Judges was against the claim, the petitioner was forever barred. And no petition was to be acted upon, or received by the Judges, unless presented within twelve months from passing the act, if not prevented by some legal disability.

and in such case within twelve months after the disability removed.

By an act passed April 2d, 1803, (post. chap. 2377,) the inspectors of the prison in Philadelphia, are authorized to sell, or otherwise appropriate, all the vacant unimproved lots, the property of the commonwealth, and with the proceeds thereof to build a new prison, &c. but the state is to make no reparation in case of the title to any of them proving defective. And in consideration of the grant, the commonwealth reserved a right to the several counties to send their convicts to the present prison of the city and county.

All claim by the state to lands within the borough of York, was released by act of March 7th, 1805, (chap. 2548,)

and it would appear that the 11th and 12th sections of the act in the text have not been considered as having any effect; and the lands appurtenant to many of the towns therein mentioned, have at a subsequent period, been sold by the Proprietary agents.

City lots could not be located as vacant land, under the act of March 9th, 1796, to compensate *David Meade* and others; (chap. 1866,) so held, in the commonwealth v. *McKissick* and others. 4 Dallas, 292.

By an act passed April 7th, 1807, the powers vested in the wardens of the city by the 13th section of the act in the text, are now vested in the Mayor, Recorder and any two Aldermen of the said city, (chap. 2815.)





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ciaments; and, generally, to minister justice to all persons, and exercise the jurisdictions and powers hereby granted, as fully and amply, to all intents and purposes whatsoever, as the Justices of the Courts of King's Bench, Common Pleas, and Exchequer, in England, may, or can do.	139, 140
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